FEDERAL REGISTER

VOLUME 17 · NUMBER 3

Washington, Friday, January 4, 1952

TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases, and Other Operations

PART 643—OILSEEDS

SUBPART—1952-CROP CASTOR BEAN PRODUCTION AND PROCUREMENT PROGRAM

§ 643.568 *1952-crop castor beans.* (a) In order to obtain increased quantities of castor beans and castor oil for national defense purposes, the Secretary of Agriculture has authorized the Commodity Credit Corporation (hereinafter referred to as "CCC") to carry out a program for the domestic production and procurement of 1952-crop castor beans. It is contemplated that castor beans will be produced under the program on about 200,000 acres in areas for which adapted seed is available within the States of Arizona, Arkansas, California, Oklahoma, and Texas. The program will be available to producers who enter into contracts with CCC or with private companies, producer cooperative associations or other persons who contract with CCC to arrange for castor bean production in specified areas within such States. Such producer contracts will contain the detailed terms and conditions under which castor beans will be grown by and purchased from producers. Insofar as possible, contracts will be offered to producers within concentrated production areas, so that maximum use can be made of harvesting machinery and receiving, hulling, and storage facilities. In general, the base price to be paid to producers will be the higher of 10 cents per pound or the market price at the time and place of delivery, out-of-hull basis, with appropriate adjustments in the net weight or price for quality factors, which may include oil content. Premiums will be paid for certain improved varieties or strains of castor beans grown for planting seed under special seed production and purchase contracts. Technical guidance will be available to producers participating in the program.

(b) CCC will stand ready to enter into contracts with private companies, producer cooperative associations, or others with adequate facilities who will agree to arrange for the production and procurement of 1952-crop castor beans in certain areas. Under the terms of such contracts the company, association, or other person will be required to (1) enter into contracts with producers for the production and purchase of 1952-crop castor beans, (2) furnish the producers with the technical advice and assistance necessary to obtain a good crop, (3) purchase, at prices not less than the price to producers mentioned above, all castor beans grown and delivered by producers under contract which are suitable for crushing or planting seed, (4) hull the castor beans in areas where the producers deliver in the hull pursuant to the terms of their contracts, (5) inspect, handle, store, and load out the castor beans, and (6) perform all functions and services necessary to the efficient operation of the program in the area. Such contracts also will provide that the company, association, or other person may, at its option, offer to CCC, under terms provided in the contracts, any or all castor beans delivered by producers under contract at any time when the base market price at the delivery point, as determined by CCC, is less than the base price of ten cents per pound. If CCC makes farm machinery or other equipment available to producers in any area covered by such a contract with a company, association, or other person, under conditions which CCC determines are likely to result in a loss, such company, association, or other person must deliver to CCC, under terms provided in

(Continued on next page)

NOTICE

The Federal Register Division will be open for the filing and public inspection of documents pursuant to section 2 of the Federal Register Act (49 Stat. 500; 44 U. S. C. 302) between the hours of 8:45 a. m. and 5:15 p. m. on Saturday, December 29, 1951, and Saturday, January 5, 1952. Issues of the FEDERAL REGISTER *will be published during the holiday period as follows:*

December 27 through December 29, 1951; January 1, January 3 through January 5, 1952.

CONTENTS

FEDERAL REGISTER

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CONTENTS—Continued

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

the contract, a quantity of castor beans equivalent to the estimated production handled with such machinery or equipment, unless provision for reimbursement of CCC in full for such loss is made. Any private company, producer association, or other person interested in entering into such a contract with CCC should notify the Chairman, State PMA Committee, for the State of Arizona, Arkansas, California, Oklahoma, or Texas, as the case may be, of his interest and request further information. Such notification must be filed with the State PMA Chairman within ten days from the date of publication of this notice in the FEDERAL REGISTER, unless the State PMA Chairman, for good cause shown, extends the time for filing such notification. The State PMA Committee will determine the areas in which the above described contract will be effective within the State, and an authorized CCC contracting officer within the State PMA office will enter into contract on behalf of CCC.

(c) In areas where necessary CCC will endeavor to make available harvesting machinery for rental to producers or custom operators who enter into an agreement to harvest castor beans produced by farmers under the program.

(d) There will be made available to producers under the program facilities for receiving, hulling (except where producers are required by their contracts to deliver castor beans out of hull), and inspecting castor beans delivered by such producers pursuant to the terms of their contracts.

(e) Other information regarding the program may be obtained from the appropriate State committee in States where the program is in operation or by writing to the Fats and Oils Branch, Production and Marketing Administration, Department of Agriculture, Washington 25, D. C.

(f) The following is a list of the addresses of the Chairmen of the State Committees for the States where castor beans will be produced under the program:

Chairman, State PMA Committee, Union Investment Co. Building, 416 South First Street, Phoenix, Ariz.

Chairman, State PMA Committee, 108½ West Third Street, P. O. Box 2781, Little Rock, Ark.

Chairman, State PMA Committee, 2288 Fulton Street, P. O. Box 247, Berkeley 4, Calif.

Chairman, State PMA Committee, Etherton Building, Sixth and Main Streets, Stillwater, Okla.

Chairman, State PMA Committee, AAA Building, College Station, Tex.

(Sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interprets or applies secs. 303, 304, 64 Stat. 801, 802, secs. 4, 5, 62 Stat. 1070, as amended; 50 U. S. C. App. Sup. 2093, 2094, 15 U. S. C. Sup. 714b, 714c)

Issued this 29th day of December 1951.

[SEAL] JOHN H. DEAN,
Acting Vice President, Commodity Credit Corporation.

Approved:

ELMER F. KRUSE,
Acting President, Commodity Credit Corporation.

[F. R. Doc. 52-60; Filed, Jan. 3, 1952; 8:50 a. m.]

TITLE 7—AGRICULTURE

Chapter VII—Production and Marketing Administration (Agricultural Adjustment), Department of Agriculture

PART 729—PEANUTS

COUNTY ACREAGE ALLOTMENTS FOR 1952 CROP; FLORIDA

Basis and purpose. Section 358 (e) of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1358 (e)), provides that the Secretary of Agriculture may, if the State Production and Marketing Administration Committee recommends such action and the Secretary determines that such action will facilitate the effective administration of the provisions of the act, provide for the apportionment of the State acreage allotment among the counties in the State on the basis of the past acreage of peanuts harvested for nuts (excluding acreage in excess of farm allotments) in the county during the five years immediately preceding the year in which such apportionment is made, with such adjustments as are deemed necessary for abnormal conditions affecting acreage, for trends in acreage, and for additional allotments for types of peanuts in short supply under the provisions of section 358 (c) of the act. The State Production and Marketing Administration Committee for the State of Florida has recommended that the 1952 State peanut acreage allotment heretofore established (16 F. R. 11991) be apportioned among the peanut-producing counties in the State pursuant to the provisions of section 358 (e) of the act. It is hereby determined that apportionment of the 1952 Florida peanut acreage allotment among the counties in the State will facilitate the effective administration of the provisions of the act, and the purpose of this document is to announce such apportionment.

The recommendation of the Florida State Production and Marketing Administration Committee to apportion the 1952 State peanut acreage allotment among the counties was made after due consideration of such data, views, and recommendations as were received pursuant to public notice (16 F. R. 10897) given in accordance with the Administrative Procedure Act (5 U. S. C. 1003), and the determinations made in § 729.304 were made on the basis of the latest available statistics of the Federal Government. Peanut farmers in Florida are now making plans for the production of peanuts in 1952. In order that the State and county Production and Marketing Administration committees may establish farm acreage allotments and issue notices thereof to farm operators at the earliest possible date, it is essential that the county acreage allotments contained in § 729.304 be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the 30-day effective date provision of the Administrative Procedure Act is impracticable and contrary to the public interest, and the county acreage allotments contained in § 729.304 shall be effective upon filing of the document with the Director, Division of the Federal Register.

§ 729.304. *1952 county peanut acreage allotments.*

FLORIDA County:	*1952 county acreage allotment*
Alachua	1,774.0
Bay	101.4
Calhoun	1,933.8
Citrus	[1] 0
Columbia	846.6
Dixie	17.3
Escambia	42.4
Gadsden	926.8
Gilchrist	263.0
Hamilton	184.9
Holmes	3,737.4
Jackson	29,134.8
Jefferson	1,249.7
Lafayette	222.1
Leon	550.2
Levy	2,071.7
Liberty	13.4
Madison	230.9
Marion	2,224.7
Okaloosa	799.8
Pasco	15.8
Putnam	89.1
Santa Rosa	5,960.4
Suwannee	1,453.0
Taylor	6.4
Union	1.9
Wakulla	684.1
Walton	1,372.7
Washington	1,045.7
Total, Florida	56,924.0

[1] No eligible farms.

(Sec. 375, 52 Stat. 66; 7 U. S. C. 1375. Interprets or applies sec. 358, 65 Stat. 29; 7 U. S. C., 1358)

Issued at Washington, D. C., this 29th day of December 1951. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CHARLES F. BRANNAN, *Secretary of Agriculture.*

[F. R. Doc. 52-59; Filed, Jan. 3, 1952; 8:49 a. m.]

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[920.302 Amdt. 2]

PART 920—IRISH POTATOES GROWN IN MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, VERMONT, AND NEW HAMPSHIRE

LIMITATION OF SHIPMENTS

Findings. 1. Pursuant to Marketing Order No. 20 (7 CFR Part 920), regulating the handling of Irish potatoes grown in the States of Massachusetts, Rhode Island, Connecticut, Vermont, and New Hampshire effective under the applicable provisions of the Agricultural Marketing Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the New England Potato Committee, established pursuant to said order, and upon other available information, it is hereby found that the amended limitation of shipments, as hereinafter provided, will tend to effectuate the declared policy of the act.

2. It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U. S. C. 1001 et seq.) in that (i) the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and (ii) this amendment relieves restriction on the handling of Irish potatoes grown in the aforesaid production area.

Order, as amended. The provisions of subparagraphs (1), (2), and (5) of paragraph (b) of § 920.302 (16 F. R. 7199, 9632) are hereby amended to read as follows:

(b) *Order.* (1) During the period from January 7, 1952, to May 31, 1952, both dates inclusive, no handler shall ship potatoes grown in the counties of Berkshire, Franklin, Hampton, and Hampshire, in Massachusetts, and Hartford and Tolland in Connecticut, which do not meet the following grade and size requirements: (i) U. S. No. 2 or better grade, 2 inches minimum, or larger, diameter, or (ii) U. S. No. 1 grade, 1½ to 2¼ inches diameter with usual tolerances for size as provided by the U. S. Standards for Potatoes (7 CFR 51.366).

(2) During the period from January 7, 1952, to May 31, 1952, both dates inclusive, handlers may ship potatoes grown in the aforesaid counties which comply with the aforesaid grade and size regulations and which have been certified, as a lot, in storage: *Provided,* That the quantity of potatoes in such lot shall not exceed 1,000 hundredweight, and shall be shipped within 6 days of the date specified on the inspection certificate therefor: *And provided further,* That this exception for lot inspection in storage shall not apply to potatoes of U. S. No. 2 grade which shall be inspected only at time of shipment by common carrier or other means of transportation.

* * * * *

(5) The terms used in this section shall have the same meaning as when used in Order No. 20 (7 CFR Part 920), and the aforementioned grades and sizes shall have the same meanings assigned these terms in the U. S. Standards for Potatoes (7 CFR 51.366), including the tolerances set forth therein.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 29th day of December 1951, to become effective on January 7, 1952.

[SEAL] S. R. SMITH, *Director, Fruit and Vegetable Branch, Production and Marketing Administration.*

[F. R. Doc. 52-61; Filed, Jan. 3, 1952; 8:50 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 59]

PART 600—DESIGNATION OF CIVIL AIRWAYS

CIVIL AIRWAY ALTERATIONS

EDITORIAL NOTE: Federal Register Document 51-14935, appearing at page 12690 of the issue for Tuesday, December 18, 1951, has been corrected as follows:

In item 1, the figure "5,500" has been changed to "6,500."

[Amdt. 60]

PART 600—DESIGNATION OF CIVIL AIRWAYS

CIVIL AIRWAYS ALTERATIONS

The civil airway alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee and are adopted when indicated in order to promote safety of the flying public. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest, and therefore is not required.

Part 600 is amended as follows:

1. Section 600.13 *Green civil airway No. 3 (San Francisco, Calif., to New York, N. Y.)* is corrected by changing the name "Fairfield-Suisun, Calif.," to read: "Travis AFB, Fairfield, Calif.,"

2. Section 600.108 *Amber civil airway No. 8 (Los Angeles, Calif., to The Dalles, Oreg.)* is corrected by changing the name "Fairfield-Suisun, Calif.," to read: "Travis AFB, Fairfield, Calif.,"

3. Section 600.607 *Blue civil airway No. 7 (Paso Robles, Calif., to Williams, Calif.)* is corrected by changing the name "Fairfield-Suisun, Calif. (AFB)" to read: "Travis AFB, Fairfield, Calif.,"

4. Section 600.687 is added to read:

§ 600.687 *Blue civil airway No. 87 (Lexington, Ky., to Cincinnati, Ohio).* From the Lexington, Ky., non-directional radio beacon to the Cincinnati, Ohio, radio range station.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interprets or applies sec. 302, 52 Stat. 985, as amended; 49 U. S. C. 452)

This amendment shall become effective 0001 e. s. t. January 8, 1952.

[SEAL] F. B. LEE,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 52-40; Filed, Jan. 3, 1952; 8:45 a. m.]

[Amdt. 65]

PART 601—DESIGNATION OF CONTROL AREAS, CONTROL ZONES, AND REPORTING POINTS

MISCELLANEOUS AMENDMENTS

The control area, control zone and reporting point alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee, and are adopted when indicated in order to promote safety of the flying public. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest, and therefore is not required.

Part 601 is amended as follows:

1. Section 601.687 is added to read:

§ 601.687 *"Blue civil airway No. 87 control areas (Lexington, Ky., to Cincinnati, Ohio).* All of Blue civil airway No. 87.

2. Section 601.1085 is amended to read:

§ 601.1085 *"Control area extension (Cherry Point, N. C.).* All that area within a 35-mile radius of the MCAS, Cherry Point, N. C., excluding the portions overlapping danger areas, caution areas and airspace warning areas and excluding the portion west of the eastern boundary of Amber civil airway No. 9.

3. Section 601.1089 is amended to read:

§ 601.1089 *Control area extension (Cincinnati, Ohio).* All that area within a 15-mile radius of the Cincinnati, Ohio, omnirange station, that area south of the Cincinnati, Ohio, radio range station bounded on the northeast by Red civil airway No. 18, on the south by latitude 38°52', and on the west by Blue civil airway No. 87, and that area bounded on the east by Blue civil airway No. 87, on the southwest by Red civil airway No. 27, and on the northwest by Amber civil airway No. 6.

4. Section 601.1091 *Control area extension (Detroit, Mich.)* is amended by adding the following portion to present control area extension: "and all that area north of the Detroit-Wayne Major Airport bounded on the east by Red civil airway No. 20, on the south by Red civil airway No. 63, on the west by Green civil airway No. 2, and on the north by Red civil airway No. 63."

5. Section 601.1137 is amended to read:

§ 601.1137 *Control area extension (Key West, Fla.).* From the Key West, Fla., radio range station extending 5 miles either side of the west course of the Key West radio range to the Eastern boundary of the Miami West Oceanic control area, excluding that portion below 6,000 feet between a point 20 miles west of the radio range station and the Eastern boundary of the Miami West Oceanic control area.

6. Section 601.1139 is amended to read:

§ 601.1139 *Control area extension (Lexington, Ky.).* From the Lexington, Ky., non-directional radio beacon extending 5 miles either side of a line bearing 225° True from the beacon to a point 20 miles southwest, extending 5 miles either side of a line bearing 150° True from the beacon to its intersection with the northwest course of the Corbin, Ky., VHF VAR radio range, and extending 5 miles either side of a direct line from the Lexington non-directional radio beacon to the Greater Cincinnati Airport outer marker.

7. Section 601.1222 is amended to read:

§ 601.1222 *Control area extension (Pine Bluff, Ark.).* Within 5 miles either side of the 20° True and 200° True radials of the Pine Bluff, Ark., omnirange extending from Green civil airway No. 5 on the northeast to a point 25 miles southwest of the omnirange station.

8. Section 601.1293 is added to read:

§ 601.1293 *Control area extension (Fort Smith, Ark.).* Within 5 miles either side of the 54° True and 234° True radials of the Fort Smith omnirange extending from the Fort Smith Municipal Airport to a point 25 miles northeast of the omnirange station, excluding the portion which overlaps danger areas.

9. Section 601.1983 *Three mile radius zones* is amended by adding the following airport:

Crows Landing, Calif.: Navy ALF.

10. Section 601.1984 *Five mile radius zones* is amended by deleting the following airport:

Waco, Tex.: Waco Municipal Airport.

11. Section 601.2039 *Tulsa, Okla., control zone* is amended by adding the following portion to present control zone: "and within 2 miles either side of a line bearing 03° True from the Owasso non-directional radio beacon extending from the beacon to a point 10 miles north."

12. Section 601.2153 is amended to read:

§ 601.2153 *Melbourne, Fla., control zone.* Within a 5-mile radius of the Melbourne-Eau Gallie Airport and within a 5-mile radius of the Patrick AFB extending 2 miles either side of the north course of the Melbourne radio range from the radio range station to a point 10 miles north.

13. Section 601.2220 is amended to read:

§ 601.2220 *Lubbock, Tex., control zone.* Within a 5-mile radius of Lubbock Municipal Airport, within a 5-mile radius of Reese AFB, and within 2 miles either side of the east course of the Lubbock radio range extending from the Lubbock Municipal Airport to the radio range station.

14. Section 601.2229 *Fairfield, Calif., control zone* is corrected by changing the name "Fairfield-Suisun Air Force Base" to "Travis Air Force Base, Fairfield, Calif." and by changing the name "Fairfield-Suisan Army radio range" to "Travis AFB radio range."

15. Section 601.2260 *Fort Smith, Ark., control zone* is amended by adding the following portion to present control zone: "and within 2 miles either side of the 54° True and 234° True radials of the Fort Smith omnirange extending from the airport to a point 10 miles northeast of the omnirange station."

16. Section 601.2301 is added to read:

§ 601.2301 *Waco, Tex., control zone.* Within a 5-mile radius of the Waco Municipal Airport and within a 5-mile radius of the Connally AFB, Waco, Tex.

17. Section 601.4108 *Amber civil airway No. 8 (Los Angeles, Calif., to The Dalles, Oreg.)* is amended by changing name of facility "Fairfield-Suisun, Calif.," to "Travis AFB, Fairfield, Calif.,"

18. Section 601.4270 *Red civil airway No. 70 (Midland, Tex., to Oklahoma City, Okla.)* is amended by changing name of facility at Childress, Tex., and Hobart, Okla., from "VHF radio range station" to "omnirange station;"

19. Section 601.4687 is added to read:

§ 601.4687 *Blue civil airway No. 87 (Lexington, Ky., to Cincinnati, Ohio.).* No reporting point designation.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interprets or applies sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective 0001 e. s. t., January 8, 1952.

[SEAL] F. B. LEE,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 52-41; Filed, Jan. 3, 1952; 8:45 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

Subchapter C—Regulations Under Specific Acts of Congress

PART 310—QUANTITY LIMIT RULES UNDER SECTION 2 (A) OF THE CLAYTON ACT AS AMENDED BY THE ROBINSON-PATMAN ACT

The Commission on November 20, 1951, made "Findings, Order (promulgating its Quantity-Limit Rule 203-1, to fix and establish a quantity limit as to replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity, to be in full force and effect on and after April 7, 1952), and Statement of Basis and Purpose"; said quantity-limit rule 203-1 being as follows:

§ 310.1 *Quantity-Limit Rule 203-1, to fix and establish a quantity limit as to replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity.* The quantity limit as to replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity is twenty thousand (20,000) pounds ordered at one time for delivery at one time.

(Sec. 6, 38 Stat. 722; 15 U. S. C. 46. Interprets or applies sec. 2 (a), 49 Stat. 1526; 15 U. S. C. 13 (a))

Said "Findings, Order, and Statement of Basis and Purpose", together with the minority findings and statement of Commissioner Mason, follow:

FINDINGS, ORDER, AND STATEMENT OF BASIS AND PURPOSE

Pursuant to the provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act (U. S. C., Title 15, sec. 13), the Federal Trade Commission, after due investigation and hearing to all interested parties in accordance with the provisions of Rule XXX of its Rules of Practice (16 CFR 2.30) and of section 18 of its General Procedures (16 CFR 7.11), finds, orders and states as follows with respect to replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity:

Findings. 1. Available purchasers in the greater quantities of annual dollar volumes of six hundred thousand (600,000) dollars and more are so few as to render differentials on account thereof unjustly discriminatory against purchasers in smaller quantities and promotive of monopoly in the lines of commerce in which the sellers and purchasers, respectively, are engaged.

2. The carload quantity of twenty thousand (20,000) pounds ordered at one time for delivery at one time is the quantity upon which the maximum differential on account of quantity should be granted, that quantity being the reasonable maximum as to which there will be a sufficient number of available purchasers so as not to render such a maximum differential unjustly discriminatory against purchasers in smaller quantities and promotive of monopoly in the lines of commerce in which the sellers and purchasers, respectively, are engaged.

3. For the purpose of preventing or lessening unjust discrimination against purchasers of smaller quantities and promotion of monopoly in the lines of commerce in which the sellers and purchasers, respectively, are engaged, it is reasonably necessary to fix and establish the quantity of twenty thousand (20,000) pounds ordered at one time for delivery at one time as the quantity limit so that said section of said Act shall not be construed to permit any greater differential based on quantity than that based on such quantity limit.

It is therefore ordered, That the following rule, which may be cited as Quantity-Limit Rule 203-1, to fix and establish a quantity limit as to replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity be, and it hereby is, promulgated to be in full force and effect on and after April 7, 1952:

The quantity limit as to replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity is twenty thousand (20,000) pounds ordered at one time for delivery at one time.

STATEMENT OF BASIS AND PURPOSE OF QUANTITY-LIMIT RULE 203-1

1. *Statement with Respect to First Finding.* This proceeding is concerned with and includes only replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles as a class of commodity. Tires and tubes are used in their ordinary and common meaning to refer to casings, tires, and tubes made in any part of natural or synthetic rubber which individually or in any combination are designed for use or used as the tread on the wheels of motor vehicles which operate either on or off the road. By motor vehicles is meant any passenger, farm, commercial, or industrial vehicle or machine which is itself powered by a motor or engine or which is or is designed to be functionally attached to any vehicle or machine so powered. The tires and tubes covered are called replacement to distinguish them from original equipment tires and tubes which are not included. Original equipment tires and tubes are those which are used by the manufacturer of a motor vehicle to equip such vehicle and which are components or accessories of such vehicle when it is first sold.

Replacement tires and tubes made of natural or synthetic rubber for use on motor vehicles (hereinafter sometimes referred to as tires) are purchased in annual dollar volumes up to almost fifty million dollars. Based upon frequency, such volumes appear to cluster within five ranges or volume brackets with fairly well-defined breaks as follows:[1]

VOLUME BRACKETS

Number:	*Range*
1	Under $100,000.
2	$100,000 to $600,000.
3	$600,000 to $5,000,000.
4	$5,000,000 to $25,000,000.
5	$25,000,000 to $50,000,000.

On the basis of annual dollar volume of purchases, the quantities within volume brackets three, four, and five are found to be the greater quantities to which the statute refers. With the median of the second volume bracket ($350,000) being seven times larger than the median of the first ($50,000), quantities within the second also might well be considered to be one of the greater quantities; but there can be no doubt that quantities within volume brackets three, four and five are within that category when the medians of those volume brackets, respectively, are 56, 300 and 750 times larger than the median of the first.

As shown by the following table, out of a total of 48,198 purchasers only 63 or about 13/100 of 1% are available as purchasers of such greater quantities:

Volume brackets (No.)	Purchasers	
	Number	Percent of total
1	47,247	98.027
2	888	1.842
3	52	.108
4	9	.019
5	2	.004
Total	48,198	100.000

With but one deviation, average unit prices vary directly with volume. The following table sets forth the price differentials on quantities of tires in the several volume brackets as a percentage under the highest price.

Volume brackets (No.)	Price differentials	
	Passenger	Truck
1	0.0 to 16.0	0.0 to 20.5
2	18.5	23.0
3	26.0	32.0
4	23.5	40.0
5	20.5	38.5

The Commission finds that the differentials on the greater quantities are in fact on account of quantity although, unlike those on the smaller quantities generally sold to dealers under quantity-discount schedules, they are not expressly stated to be on account of quantity but arise principally in connection with negotiated cost-plus contracts entered into between manufacturers and the few large so-called mass distributors. If, in this proceeding or in proceedings to enforce the quantity-limit rule, it could be successfully contended that cost differences resulting from differing methods justified larger differentials on the greater quantities, the quantity-limit proviso would have the same loophole with respect to other-than-quantity differentials that unamended section 2 had with respect to quantity differentials. The administrative, judicial and legislative history of quantity differentials under the Clayton Act show that it was not the intent of Congress that the quantity-limit proviso should have such a loophole.

[1] See Table I of Appendix A of the Notice of Hearing (14 F. R. 6044), all of which appendix is incorporated herein and made a part hereof by reference.

Under unamended Section 2 of the Clayton Act differentials were permitted that made "only due allowance for difference in the cost of selling or transportation", but those "on account of differences in * * * quantity" were allowed without regard to whether they were justified by differences in cost. In the Goodyear[2] case under that section, where a differential arising under a cost-plus contract could not be justified by differences in cost resulting from differing quantities, it was successfully contended by the respondent, contrary to the Commission's position, that the discrimination was, nevertheless, on account of quantity and, for that reason, was not required to be cost justified. In holding that the differential was on account of quantity, factors negativing such a characterization were cast aside and ignored by the court because they were found to be naturally inherent where unusual volume (from thirteen to thirty-six times larger than the largest independent competitors) was expected to and did result.[3]

Thereafter, and with the Goodyear case as a major consideration, the cost proviso was amended and the quantity-limit proviso was added by the Robinson-Patman Act.

The amended cost proviso closed the loophole through which Goodyear had escaped by enacting that "nothing * * * shall prevent differentials which make only due allowance for differences in cost * * * resulting from differing methods or quantities". Under that language, two separate and distinct categories of differentials (one on "account of quantity", and the other "on account of method") are not recognized or created; but all differentials are limited to those that can be justified by differing methods, differing quantities, or both, with no necessity for distinction.

In contrast to unamended Section 2 which did not cover differentials on account of quantity, the quantity-limit proviso is concerned only with such differentials. It follows that differentials which escaped the reach of unamended Section 2 because they were on account of quantity are, for that reason, clearly subject to the quantity-limit proviso. The fact that the amended cost-justification proviso permits differentials to be justified by differences in cost resulting from differing methods as well as from differing quantities does not affect that conclusion. There is, therefore, no basis for any contention that the greater differentials under cost-plus contracts in this proceeding are not on account of quantity, for unusually large volumes resulted which in almost all instances averaged from 163 to 5,150 times larger than the average of over 98% of the smaller dealers (see second table below). Such differentials are on account of quantity, a fortiori, it having been established in the Goodyear case that the greater differential under the cost-plus contract was on account of quantity, other considerations to the contrary notwithstanding, because an unusually large volume (but only from thirteen to thirty-six times larger than the largest of the smaller dealers) resulted. Moreover, and by the same token, differentials under other methods or arrangements however designated or justified are on account of quantity when greater quantities result.

From the last table it appears that differentials ranging from 26 to 30.5 percent on passenger tires and from 32 percent to 40 percent on truck tires are granted on the greater quantities to only 63 purchasers, constituting about 13/100 of 1 percent of the total or only slightly more than one in a thousand. The magnitude of such differentials is shown by the fact that a larger purchaser with a differential of 30 percent can profitably resell tires at a price about the same as the smallest purchasers pay for them. Under these circumstances such differentials must, inevitably, have a tendency to destroy the business of the many smaller purchasers; and they are, therefore, necessarily rendered unjustly discriminatory within the meaning of the statute by the fewness of the purchasers to whom they are available.[4]

Moreover, available purchasers in greater quantities are so few as to render differentials on such quantities promotive of monopoly in them. What has happened, and is in the process of happening, confirms what was not merely probable but almost inevitable in 1926 when there first appeared[5] differentials substantially of the same kind and amount as are now available to a few purchasers in greater quantities, namely, an unmistakable trend of the smaller purchasers towards extinction and of the larger toward monopoly.[6]

In 1926, when such a differential was first granted, the smaller purchasers (the traditional dealer-distributor group) supplied about 90 percent of the physical units demanded by the replacement market. Four years later in 1930, after they had felt the full force of the differential in the hands of the large competitor, the dealer-distributor group's position had slumped to 70 percent. In 1930 other manufacturers began granting similar differentials to other very large competitors of the small dealer-distributors, and eleven years later in 1941 only about 48 percent of the replacement market was being supplied by the dealer-distributor channel. There is a hiatus in the figures for the war years of 1942 to 1945, inclusive, but those for 1946 show that the dealer-distributors had recaptured during the war years about 4 percent of the market so as to hold about 52 percent. In 1947, however, there was an indication that the downward trend in the position of the dealer-distributors had started again, for in that year it slipped to slightly under 52 percent of the physical volume.[7]

In terms of dollar volume of purchases also, the figures show that in 1947 the smaller purchasers in the first (under $100,000) volume bracket, constituting more than 98 percent of the total, did only about 52 percent of the total replacement business. Making up the remaining approximately 48 percent of the business done by less than 2 percent of the purchasers with dollar volumes over $100,000 was the somewhat more than 18 percent done by about 1.85 percent of the purchasers in the second ($100,000 to $600,000) volume bracket and the substantially 30 percent done by 13/100 of 1 percent of the purchasers in the greater quantities over $600,000 in the three largest volume brackets. The details are given in the following table:

Volume (brackets)	Purchasers		Purchases (percent of total)
	Number	Percent of total	
1	47,247	98.027	52.4
2	888	1.842	18.7
3	52	.108	8.5
4	9	.019	10.1
5	2	.004	10.3
Total	48,198	100.000	100.0

The following table more completely reveals the overshadowing size attained by the sixty-three purchasers of the greater quantities with the differentials available on such quantities. It does so by stating the size of the average purchaser in each volume bracket as a multiple of the size of the average purchaser in the smallest bracket, the size of the average purchaser in each of the volume brackets being calculated by dividing the percentage of the business done by all purchasers in each bracket by the number of such purchasers.

Volume (bracket)	Purchasers (number)	Purchases: percent of total		Relative size of average purchaser
		Bracket	Average	
1	47,247	52.4	0.001	1
2	888	18.7	.021	21
3	52	8.5	.163	163
4	9	10.1	1.121	1,121
5	2	10.3	5.150	5,150

Thus it appears that the average purchasers in the third, fourth, and fifth volume brackets are, respectively, 163, 1,121 and 5,150 times larger than the average purchaser in the first. The average purchaser in the second volume bracket being 21 times larger than the average purchaser in the first, there is also a very substantial difference in size between them, but that difference is so dwarfed by the differences in size between the average purchasers in the three largest volume brackets and the average purchaser in the smallest that the real giantism which prevails among the few purchasers of the greater quantities is emphasized.

It is also evident that available purchasers in greater quantities are so few as to render differentials on such quantities promotive of monopoly in the line of commerce in which the sellers (manufacturers) of tires are engaged.

Accompanying the decline in the market position of the many smaller purchasers and the rise in the market position of the few large purchasers which, as stated above, occurred between 1926 and 1947, was a substantial decline in the number of tire manufacturers, there having been in the neighborhood of 100 at about the beginning of that period and in 1947, on a corporate affiliation basis, only twenty-one. Moreover, in 1947 the replacement tire business had become highly concentrated among the remaining 21 sellers, the seven largest manufacturers doing 86.3 percent of the total business, the seven next largest doing 11.1 percent and the seven smallest doing 2.6 percent.

That the differentials on the greater quantities, which are rendered promotive of monopoly among the purchasers of such quantities by the fewness of such purchasers, are also, by the same token, rendered promotive of monopoly among sellers is shown by the fact that such monopolistic concentration among sellers increases as the size of the purchasers increases. This is revealed by the following table which shows the percentage of business in each volume bracket which is done by the seven largest, the seven next largest, and the seven smallest manufacturers:

[2] In the Matter of The Goodyear Tire & Rubber Company, 22 F. T. C. 232 (1936).

[3] The Goodyear Tire & Rubber Company v. Federal Trade Commission, 101 F. (2d) 620, 624 (C. C. A. 6, 1939).

[4] The Providence Coal Company v. The Providence and Worcester Railroad Co., 1 I. C. C. 107, 117–118 (1887).

[5] In the Matter of The Goodyear Tire & Rubber Company, 22 F. T. C. 232, 293–294 (1936).

[6] Federal Trade Commission v. Morton Salt Company, 334, U. S. 37, 60 (1948).

[7] Leigh, Automotive Tire Sales by Distribution Channels (1948), submitted jointly by some of the largest tire manufacturers as a part of their Data, Views and Argument; In the Matter of The Goodyear Tire & Rubber Company, 22 F. T. C. 232, 296–302 (1936).

Bracket	Purchasers percent in bracket	Purchases percent in bracket	Percent of business done in bracket by—		
			7 largest manufacturers	7 next largest manufacturers	7 smallest manufacturers
(1)	98.027	52.4	84.2	12.0	3.8
(2)	1.842	18.7	85.1	12.7	2.2
(3)	.108	8.5	86.4	13.2	.4
(4)	.019	10.1	88.0	10.0	2.0
(5)	.004	10.3	97.3	2.7	.0
All brackets			86.3	11.1	2.6
Total	100.000	100.0		100	

From the above it appears that the seven largest manufacturers do 84.2 percent of the business with the smallest purchasers in the first volume bracket and an increasing percentage as the size of the volume brackets increases until they do almost all (97.3 percent) of the business with the largest purchasers in the fifth volume bracket. Substantially the contrary relationship exists between the seven smallest manufacturers and the purchasers in the five volume brackets. The seven intermediate manufacturers are in an intermediate position, doing an increasing percentage of business through the first three volume brackets only, with a quite noticeable decline in the fourth volume bracket followed by a very sharp reduction in the fifth and largest.

Although other factors may be and probably are involved, the inability of smaller manufacturers to participate or to participate more than they do in the business of purchasers in greater quantities is directly related to price. Thus the differentials on the greater quantities to the few available purchasers thereof is casually connected with the concentration of business in the hands of the larger manufacturers and with the decline in the number of manufacturers. It is very probable that this process continued even during the course of this proceeding subsequent to 1947. From information before the Commission, it is warranted in believing that since 1947 two of the largest manufacturers were able to take away from a smaller manufacturer on a basis which directly or indirectly involved a lower price such a significant volume of business with a purchaser in greater quantities that the effect may be to threaten, within the foreseeable future, the continued independent existence of the smaller manufacturer. Similarly, the Commission is warranted in believing that since 1947 some of the smaller of the twenty-one manufacturers, perhaps as many as four, ceased to function or to function independently, and that at least some of the latter have become affiliated with one or more of the larger manufacturers.

An affinity between sellers and purchasers based on size, such as exists in the replacement tire industry, has been aptly described by some economists as a "bilateral oligopoly", which is a reciprocal relationship between a few large sellers and a few large purchasers operating to dominate the market for their mutual benefit and to the injury or destruction of the smaller sellers, the smaller purchasers, and the competitive system.

2. *Statement with Respect to Second Finding.* The principle of the quantity-limit proviso is that economies of mere size do not justify the risk of monopoly,[8] and its function is to avoid that risk by preventing such economies from being reflected in price. It performs its function by limiting to a quantity fixed by the Commission the applicability of the cost justification proviso which states that price differentials are permitted which make only due allowance for differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which commodities are sold and delivered. With a quantity limit in effect, differences in cost under the cost-justification proviso must and can only be used to support a price for a quantity smaller than the limit which is higher than a seller's price for the quantity fixed as the limit; but such cost differences cannot be used to support a price for a quantity greater than the limit which is lower than a seller's price for the quantity established by the limit.

As legislative history shows,[9] the Interstate Commerce Commission has long applied the same principle to perform the same function. That Commission has prevented unjust discrimination against the many smaller merchants and promotion of monopoly among the few larger ones by refusing to sanction cost-justified rate differentials on quantities not within the scope of fairly small scale business.

Such a quantity has never been stated as a volume of shipments over a period of time.[10] The Interstate Commerce Commission has repeatedly held that such volume rates are in the nature of discounts in favor of large shippers and consignees and has rejected them because the quantity named would be arbitrary in any case.[11]

The quantity upon which the lowest rate may be charged has consistently been stated in terms of a single shipment. In the case of railroad transportation, this has typically been a single carload.[12] While economies accruing on a multiple-carload shipment are greater than those on a single carload, cost-justified rate differentials on multiple-carload shipments have been rejected (except where necessary to coordinate different modes of transportation)[13] because of their tendency to promote monopoly in the hands of the relative few able to deal in multiple carloads. On the other hand, because of the increased number of patrons who usually can buy and sell in carloads, the obvious and substantial economies accruing on a single carload as compared to a less-than-carload shipment can be reflected in a rate differential with only a slight tendency to concentrate business.[14] Where the usual situation does not exist and only a relative few can deal in a carload, the Interstate Commerce Commission has insisted that all quantities move at the same rate.[15]

The tire industry has designated 20,000 pounds as a carload quantity, and as such it has been the basis of a carload discount. In finding that the carload quantity of 20,000 pounds ordered at one time for delivery at one time (rather than some annual dollar volume of purchases less than $600,000) is reasonably the maximum quantity as to which there will be a sufficient number of available purchasers in addition to the objectionable few of 63 so as not to render the maximum differential justified by savings in cost unjustly discriminatory or promotive of monopoly, the Commission has applied the principle of the quantity-limit proviso as the Interstate Commerce Commission has applied the same principle to accomplish the same purpose.

The judgment of this Commission, like that of the Interstate Commerce Commission, is that discounts based on volume of transactions over a period of time are arbitrary and that those based on single transactions are not.[16] Moreover, in recent litigation involving price discrimination under section 2 of the Clayton Act, it has been judicially recognized that volume discounts reduce costs to purchasers on a basis which is ultimately their size whereas the incidence of a carload discount is not arbitrarily determined by the size of the purchasers but depends upon an obvious difference in handling and delivery costs, with it being "not merely probable" but "almost inevitable" that volume discounts would accelerate the trend of the larger purchasers towards monopoly and the smaller towards extinction.[17] In addition, cumulative volume discounts have a substantial tendency to eliminate competition and promote monopoly among sellers by causing purchasers to buy all of their requirements from only one seller.[18]

A multiple-carload quantity is rejected as a limit under the quantity-limit proviso for the same reason that it is rejected as a limit for freight rate differentials. As has been pointed out above, multiple-carload rates have not been authorized because they are rendered unjustly discriminatory and promotive of monopoly by the fewness of available shippers and consignees of multiple carloads. It should follow from that alone that a price differential on such a quantity is obnoxious for the same reason. That available purchasers of multiple-carloads are objectionably few in fact is supported by 1947 data now to be discussed with respect to the number of available purchasers of a carload quantity of 20,000 pounds.

These data show that among a representative group of dealers with annual dollar volumes ranging up to about $350,000, the number of carload purchasers and the number of carloads, as a percentage of volume, bought by them varied directly with volume. While substantially all carloads were bought by dealers with annual volumes in excess of $35,000, all of them within that group did not buy in carloads and all carload purchasers among them did not buy all of their requirements in carloads. Only about 5 percent of the dealers with volumes from $35,000 to $100,000 bought carloads, whereas about 25 percent of those with volumes over $100,000 did so. The percentages of volume bought in carloads by the carload purchasers in the $35,000 to $100,000 bracket increased from

[8] H. R. Rep. 2287, 74th Cong., 2d Sess., March 1936.

[9] H. R. Rep. 2287, 74th Cong., 2d Sess., March, 1936; Sen. Rep. 1502, 74th Cong., 2d Sess., February, 1936.

[10] The Providence Coal Company v. The Providence and Worcester Railroad Co., 1 I. C. C. 107 (1887); Books, Drugs, and Cotton Goods from New York to Chicago, 256 I. C. C. 85 (1943).

[11] Forwarder Rates Conditioned Upon Aggregates of Tonnage, Western Freight Association, 264 I. C. C. 225, 233 (1945).

[12] Anaconda Copper Mining Company v. Chicago & Erie Railroad Company, 19 I. C. C. 592 (1910; Sharfman, The Interstate Commerce Commission (1936), Vol. III-B, pp. 406-407.

[13] Molasses from New Orleans, La., to Peoria and Pekin, Ill., 235 I. C. C. 485 (1939).

[14] Id. at 497.

[15] Planters' Compress Company v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company, et al., 11 I. C. C. 382 (1905).

[16] See, for example: In the Matter of H. C. Brill Co., Inc., 26 F. T. C. 666 (1938); In the Matter of Simmons Company, 29 F. T. C. 727 (1939).

[17] Federal Trade Commission v. Morton Salt Company, 334 U. S. 37, 60-61 (1948).

[18] In the Matter of Simmons Company, 29 F. T. C. 727, 742 (1939).

about 25 percent at the bottom to about 40 percent at the top. The same percentages for the $100,000 to $350,000 bracket ranged from about 50 percent at the bottom to about 75 percent at the top. More than 93 percent of all carloads going to the group were bought by the carload purchasers with volumes over $100,000.

These data cannot properly be, and are not, considered as precisely revealing the facts as to the actual number of carload purchasers and purchases in 1947 or as a basis for precisely forecasting what such facts will be with a 20,000 pound quantity limit in effect. They do, however, strongly support broad inferences which the Commission makes. It is inferred that all of the few purchasers with annual volumes of $600,000 and over should be able to buy all or substantially all of their requirements in carload lots of 20,000 pounds, and that they alone could buy in multiple-carload quantities in any substantial degree. It is also inferred that the overwhelming majority of additional carload purchases will be made by some but substantially less than all of the purchasers with annual volumes between $100,000 and $600,000.

It being necessary to have as available purchasers of the quantity fixed by the limit some of those with annual volumes in the $100,000 to $600,000 bracket so as to eliminate the objectionable fewness, the quantity established by the rule determines how many there should be, not precisely by naming an annual volume somewhere between $100,000 and $600,000 that would be arbitrary in its inclusion and exclusion, but flexibly by establishing the quantity ordered at one time for delivery at one time which is not beyond reach of purchasers generally in that volume bracket and as to which there are obvious savings in handling and delivery costs.

The fact that relatively few purchasers with annual dollar volumes between $35,000 and $100,000, mostly those with volumes approaching the larger figure, will also be available as purchasers of 20,000 pound carload quantities does not increase the number of available purchasers thereof sufficiently to justify eliminating them by the only device that would do so with more exactness. For it could only be so done by fixing an annual dollar volume of $100,000 as the limit, and this would arbitrarily exclude all purchasers of smaller volumes even though they purchased in the cost-saving carload quantity and would arbitrarily include all purchasers of greater volumes even though they did not. The relative certainty that almost none of the purchasers with annual volumes less than about $35,000, numbering about 32,000 and constituting about two-thirds of the total, will be available as purchasers in 20,000 pound lots makes it clear the carload quantity is not too large.

3. *Statement With Respect to Third Finding.* Just as the Clayton Act was shown by the Commission in the Goodyear tire case[19] to require the cost proviso of the amending Robinson-Patman Act to close the loophole with respect to the necessity for justification on a cost basis of all differentials, so the cost-justification proviso of the Robinson-Patman Act has been shown by the Commission in the United States Rubber Tire case[20] and in this proceeding to require the issuance of a quantity limit to close the loophole with respect to differentials which adversely affect competition in the manner specified by the quantity-limit proviso. Both of those cases attempted to prevent the development of the conditions which now prevail with respect to price discrimination in the replacement tire industry. The Goodyear case failed because the unamended statute permitted any price differentials so long as different quantities were involved, regardless of their adverse effect upon competition. The United States Rubber case has been relatively ineffectual because, in the absence of a quantity limit, the amended statute permits price differentials on greater quantities which are rendered unjustly discriminatory and promotive of monopoly by the fewness of available purchasers of such quantities so long as they are substantially justified by differences in cost. The sponsor of the Robinson-Patman Act in the Senate cited the factual pattern in the Goodyear case as necessitating the enactment of the quantity-limit proviso.[21] It did.

Unless the Clayton Act as amended by the Robinson-Patman Act is implemented by this quantity-limit rule, it is relatively certain that the conditions with respect to price discrimination which now prevail and which began to develop as early as 1926 in the replacement tire industry will continue and worsen. With the rule in effect, such may not be the case and the contrary may happen. In any event the capacity of the Act should be exhausted in an attempt to remedy the evil. This will be accomplished by the promulgation of the rule and, if necessary, the institution of proceedings to enforce it under complaints against sellers, purchasers, or both, charging violation of section 2 as implemented by it.

Issued: December 13, 1951.

By the Commission.

[SEAL] D. C. DANIEL, *Secretary.*

MINORITY FINDINGS OF COMMISSIONER MASON

Pursuant to the provisions of section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, the majority of the Federal Trade Commission made its findings and order with statement of basis and purpose, in this proceeding. The minority files this, its findings, together with statement of basis and reasons.

FINDINGS

1. The facts available in this proceeding are not such as to reasonably demonstrate that purchasers in quantities greater than 20,000 pounds ordered at one time for delivery at one time are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly.

2. The facts available in this proceeding are not such as to reasonably demonstrate that there is a fewness of purchasers within the meaning of the statute.

3. The facts available in this proceeding are not such as to reasonably demonstrate the existence of conditions promotive of monopoly in the manufacture or distribution of replacement tires and tubes.

4. The facts available in this proceeding are not such as to demonstrate the existence of any reasonable relationship between the quantity of $600,000 annual volume and the quantity of 20,000 pounds ordered at one time for delivery at one time.

STATEMENT OF BASIS AND REASON FOR THE ABOVE FINDINGS

Congress gives us the power to issue rules fixing quantity limits only where purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly. When we fix such a quantity limit, the effect of our action is to prevent a seller from passing on, by an appropriate price reduction, economies that may be achieved from the sale of a larger quantity than we have fixed. Thus wherever we fix a quantity limit we reject efficiency for the sake of avoiding damage to competition arising out of price differences. We are not supposed to use this power except where the danger to competition is clearly in excess of that which justifies an ordinary price discrimination proceeding, and where no smaller remedy will avert that danger. We were expected to proceed first in the regular way by complaint and order to cease and desist, and to invoke a quantity limit only where experience showed that other remedies provided in the Act were insufficient.

In saying that ordinary proceedings under Section 2 (a) of the Clayton Act should have been used prior to recourse to the quantity limit proceeding, I do not want to be understood as modifying or withdrawing what I have said elsewhere about the public policy underlining such proceeding against price discrimination. It is the task of a Commissioner to enforce the law whether or not he thinks it wholly wise, but to enforce it in the manner that Congress has provided. Congress provided for price discrimination proceedings and intended, I think, that their possibilities be exhausted before the quantity limit is invoked. My concern is that even from a point of view wholly sympathetic to the present law of price discrimination, this instant quantity limit rule is untenable. I see no sense in attacking efficiency which the Congress attempted to protect, at least until the remedies which are designed to be consistent with efficiency have been tried and found wanting.

In establishing the quantity limit rule for replacement tires and tubes, the majority is showing no such restraint. The Commission has undertaken only two significant price discrimination cases against tire manufacturers. In the first of these, the Commission's order was overruled on appeal on grounds that have ceased to exist because of the subsequent passage of the Robinson-Patman Act. The second case resulted in an order in 1939 against United States Rubber Company. The majority now says that this order "has been relatively ineffectual"; but the Commission has made no field investigation to determine what have been the effects of that order, nor whether that order has been observed, nor whether new abuses by the same company call for a new proceeding. The Commission has not made field investigation of the facts as to the pricing practices of other tire manufacturers and has not attempted to correct whatever abuses there may be in these practices by the ordinary process of complaint and order. Instead, it has undertaken the present quantity limit proceeding without first exhausting its powers to require offenders to cease and desist from price discriminations that are unlawful.

Because of this failure to reserve the quantity limit procedure for its intended function, the rule now promulgated will deprive distributors and consumers of whatever economies there are in large transactions when there may be no necessity for such deprivation.

Moreover, the failure to undertake preliminary field investigation has meant that upon most important points reliable information is lacking, so that the Commission has found it necessary to proceed on a basis of inference based upon fragmentary facts.

The facts, or alleged facts, upon which the majority relied in promulgating this rule were derived from two sources. One of these was an inquiry by mail, addressed to tire manufacturers and distributors. The other was an opportunity for interested parties to present "data, views, and arguments," fol-

[19] In the Matter of The Goodyear Tire & Rubber Company, 22 F. T. C. 232 (1936); Goodyear Tire & Rubber Co. v. Federal Trade Commission, 92 F. (2d) 677 (C. C. A. 6, 1937); Federal Trade Commission v. Goodyear Tire & Rubber Co., 304 U. S. 257 (1938); Goodyear Tire & Rubber Co. v. Federal Trade Commission, 101 F. (2d) 620 (C. C. A. 6, 1939); cert. denied Federal Trade Commission v. Goodyear Tire & Rubber Co., 308 U. S. 557 (1939).

[20] In the Matter of United States Rubber Company, et al., 28 F. T. C. 1489 (1939).

[21] Remarks of Senator Robinson, 80 Cong. Rec. 6429 (April 30, 1936).

lowed by a public hearing lasting for parts of four days and covering 402 double-spaced pages of typed transcript. This is a slender basis upon which to reconstitute the price structure of a major industry.

Moreover, the procedure that was followed deprived the Commission of the full benefit that might have been attained from this limited body of information. Comprehensive and carefully analyzed summaries of the data submitted to the Commission in response to its mail inquiries were never made a part of the public record. Instead, the factual information was disclosed to interested parties only in the form of a notice of hearing and an attached factual appendix, which together filled less than two pages of the FEDERAL REGISTER. The allegations of fact contained in the appendix consisted partly of ultimate conclusions as to the facts and partly of summary statements, primarily statistical in nature, unaccompanied by explanations of the types of data relied upon and the statistical methods used in developing those summaries. Except in this document the information upon which the majority has relied was not exposed to public criticism or supplementation.

The result of this cursory method of disclosing the factual basis for the proposed rule was that interested parties who opposed the rule did not have an adequate opportunity to examine and criticize the Commission's allegations of fact and the Commission was thereby deprived of an adequate testing of these allegations. The statements submitted by interested parties prior to the public hearing and the arguments made at the public hearing undertook to challenge the Commission's statistical methods and conclusions as to such matters as the total number of customers and the total amount of replacement tire sales; the classes and class boundaries appropriate to a classification of customers according to the volume of their purchases; the average prices paid by purchasers in each volume class; the availability of carload purchasers; the profits and margins of various classes of distributors; and other similar matters. In the absence of knowledge about the statistical methods used by the Commission and about the character of the basic data, the critics were forced to rely upon their guesses as to what the Commission probably did and were often incorrect in these guesses. What the Commission had actually done was not exposed in a way which provided the benefit of informed criticism.

One example will serve to illustrate this characteristic of the public record. The Commission's statement in the FEDERAL REGISTER indicated that the 21 tire manufacturers from whom it had obtained data had a total of 48,198 customers for replacement tires. The four largest manufacturers employed an agent to compile the figures of their own sales into aggregates, and found that after eliminating duplications, these four companies alone had more than 50,000 customers. Thereupon they challenged the validity of the Commission's report of slightly more than 48,000 customers for 21 manufacturers. The fact is that the reports received by the Commission from these 21 manufacturers aggregated about 90,000 purchasers of replacement tires, but that the data available to the Commission did not include the names of purchasers with annual dollar volumes of less than $100,000, and that the Commission reduced the figure of 90,000 to slightly more than 48,000 on the basis of an estimate of the number of duplications among the smaller purchasers, this estimate being derived from certain dealer reports to the Commission as to the number of manufacturers from whom they bought and from certain estimates current in the tire industry as to the percentage of dealers who buy from more than one manufacturer. Since the participants in the public hearing were not informed that the figure 48,198 was an estimate, much less how the estimate had been made, their comments as to whether or not the estimate was reasonable and as to the effect of any error which it might contain upon the proposed rule were not and could not be of a kind that assisted the Commission in reaching a decision.

Interested parties who objected to the Commission's proposed rule made formal demand that the Commission give them an opportunity to introduce evidence which they believed would demonstrate the undesirability of the rule. While the Commission permitted them to file "data, views, and arguments," it did not grant the request that the allegations of fact contained in the documents filed be subjected to the processes of verification and cross examination which convert such allegations into credible evidence, nor did it establish any alternative procedure sufficient to test the reliability of these allegations. Interested parties argued that, in the absence of the right to introduce evidence and prove its validity, the Commission must treat as facts all statements of fact as to which offers of proof were made. Interpreting the proceeding as legislative, the Commission has not done this; but the majority, without establishing alternative procedures for testing the factual allegations for which such offers of proof were made, has rejected or ignored allegations which, if correct, would demonstrate that there is no need for any quantity limit rule and that the rule now promulgated is objectionable.

It is possible that the record might have been brought to a more satisfactory state if the Commission had granted the request of various applicants for an opportunity to offer argument in rebuttal to statements made at the hearing. However, no such rebuttal was permitted in spite of the fact that at least one applicant, a representative of Goodyear and Kelly-Springfield, was entitled to an opportunity for rebuttal under the terms of the Commission's notice of hearing as published in the FEDERAL REGISTER on December 16, 1949.

Instead of attempting to clarify the facts by such means, the Commission limited its further consideration of conflicting factual statements to staff memoranda that did not resolve them. For example, the Commission's brief statement in the FEDERAL REGISTER contained a table indicating the percentage of total purchases of tires and tubes by buyers in each volume bracket, which was bought, respectively, from the seven largest manufacturers, the seven manufacturers intermediate in size, and the seven smallest manufacturers. Upon the basis of these figures, it was argued on behalf of the rule that there was an affinity between the largest distributors and the largest manufacturers. This point was challenged on behalf of the four largest manufacturers on the basis of a computation of their own aggregate sales to customers in the various volume brackets, from which they concluded that they sold a smaller percentage of the requirements of the larger customers than of the smaller customers, and that, therefore, the opposite statistical result which appeared in the Commission's figures for the seven largest manufacturers must be due to the smallest three of that seven. Neither the computation by these manufacturers nor their conclusion from it was challenged by the Commission's spokesmen at the public hearing. The computation by the four manufacturers was subsequently challenged, however, in a staff memorandum to the Commission which contained further computations of the Commission's data purporting to show that the results for the largest four manufacturers were the same as those that the Commission had shown for the largest seven and were diametrically opposite to those shown by the manufacturers' computations. Thus, the Commission had before it a direct contradiction between two different computations of data supplied by the same four manufacturers, without any explanation of the origin or character of the contradiction. This fact was brought to the Commission's attention in another staff memorandum. However, the Commission did nothing toward further clarification of the matter, and the majority, in its published statement, has accepted the original computation presented on behalf of the Commission in the FEDERAL REGISTER. It has thus disregarded the alternative computation presented by the four manufacturers without taking steps to determine which of the two sets of figures is correct.

This illustration is representative of various respects in which the staff memoranda, by which the Commission carried the debate upon the facts beyond the results of the public hearing, consisted merely in reiteration of positions taken by the Commission's staff, sometimes with and sometimes without additional supporting data. The majority of the Commission has made no effort to test the truth of allegations of fact submitted by interested parties except by comparing them with allegations of fact submitted by the Commission's staff; and in these comparisons the majority has apparently assumed that wherever there is a conflict of such allegations, the Commission's staff is necessarily correct. Thus the procedure has been inadequate to enable the Commission to determine wisely where the truth lies.

Had the majority relied upon the public record alone, they could not have made their findings and promulgated their rule; for insofar as that record is concerned, the weight of the evidence supports those who object to the rule and appears to discredit the meager factual statements which the Commission included in the FEDERAL REGISTER as its basis for action. By accepting statements of fact that are not in the public record, the majority manages to make a prima facie case for disregarding many of the apparently significant criticisms that appear in the public record, and for reestablishing the apparent validity of some of the conclusions of fact upon which they rely. But whether these reaffirmations of the case for the rule would, in their turn, stand the test of criticism, nobody knows. For this reason, the procedure has been an arbitrary acceptance of the factual allegations that tend to prove the case for the rule and an arbitrary rejection of the factual allegations that tend to disprove it. This fact alone would constitute adequate ground for my dissent.

But even if all of the allegations of fact in support of the rule were unquestioned, I could not accept this rule. The rule as promulgated is irrelevant to the proceeding and to the alleged facts. The majority has found that the 63 buyers who purchase an annual volume of more than $600,000 of tires and tubes are so few as to render the discounts they receive unjustly discriminatory and promotive of monopoly. The logical inference from such a finding is that the Commission should prevent discounts derived from economies achieved through the purchase of larger annual volumes. The majority states that the 838 purchasers of annual volumes between $100,000 and $600,000 "might well be considered" among the few whose purchases involve unjust discrimination or danger of monopoly. However, the majority does not undertake to establish a quantity limit at either an annual volume of $600,000 or an annual volume of $100,000, or, indeed, at any other annual volume. Instead, they discard the concept of annual volume, and along with it they necessarily discard, also, all of the evidence as to the effects of prices associated with all annual volumes, both large and small. They establish a quantity limit, not in terms of annual volume, but in terms of a single purchase of a so-called carload.[1]

There is substantially nothing before the Commission that bears upon the effect of single purchases in quantities greater than a carload. No information is available as to how many buyers buy more than a carload in a single purchase. No information is available as to the difference in the prices paid by those who buy, in a single purchase, a carload or less and those who buy more than a carload (except that there are statements in the record to the effect that there was no carload discount in 1947, the year from which the Commission's data are derived, and that the National Association of Independent Tire Dealers asserted at the hearing that there is now a two percent carload discount). There is nothing whatever in the record in the way of fact or allegation to show that there is, or has been, jeopardy to competition from the fact that more than a carload is bought in a single transaction. The evidence pro and con, such as it is, all has to do with the effect of differing volumes of annual purchases and of differences in price associated therewith.

The majority seeks to justify the carload rule on two grounds. One is that the Interstate Commerce Commission commonly applies a carload limit to quantity discounts upon freight rates. As to this line of argument, it is sufficient to say that the Interstate Commerce Commission presides over a regulated industry; that the peculiarities of transportation have long been recognized by the application of special rules to transportation companies, which cannot be generalized into rules of conduct applicable to all business; and that the Congress has specified, without regard to the transportation acts, the particular findings which must be made in order to apply a carload limit to the tire industry.

The other line of argument is that there is a loose correlation between carload purchases and annual volume bought. On the one hand, the majority states that practically no carload purchases are made by buyers with annual volumes below $35,000. On the other hand, they assert that the percentage of carload purchases rises steadily with increasing annual volume until it reaches about 75 percent of total purchases at an annual volume of $350,000.

This type of relationship is by no means sufficient to support the Commission's carload rule. The critical annual volume, according to findings made by the majority, is $600,000, not $350,000. The Commission has no information whatever as to the relation between carload purchases and annual volumes above $350,000. Moreover, the showing is that at all annual volumes between $35,000 and $350,000, some purchases are made in carload quantities or larger and some purchases in less than carloads. The majority does not indicate what effect upon competition may be anticipated with changing proportions of carload purchases. They offer neither fact nor finding to indicate what proportion of carload purchases is to be regarded as sufficient to make a purchaser a carload buyer; consequently, they offer no guidance as to the number of buyers in quantities greater than carload. Yet if the statutory requirements are met, these buyers in larger quantities must be so few that these larger quantities cannot safely be allowed to become a basis for discounts.

The stubborn fact is that the Commission's evidence all pertains to annual volume of purchase, that the majority's finding as to the effect of discrimination pertains to annual volume, and that upon the basis of this evidence and this finding, the majority is trying to fix a limit upon the amount that shall be bought in a single transaction without regard to whether that amount is associated with larger or smaller annual volumes. They ignore the relationship which the statute requires between the finding made and the rule itself.

Thus, under the guise of fixing a quantity limit, they are endeavoring to force a revolution in the basis on which discounts are granted in the tire industry. This revolution would apply to large and small buyers alike and to sellers in their transactions with both classes of buyers. The majority does not suggest that purchasers of an annual volume of $100,000 are so few as to render discounts in recognition of this annual volume unjustly discriminatory or promotive of monopoly. However, under their quantity rule, a discount granted on the basis of an annual volume of $100,000 could not be justified by a showing that it merely reflected cost savings. This point has practical significance, for within the $100,000 volume bracket there appears to be a spread of about 16 percent on passenger tires and 20 percent on truck tires between the lowest price and the highest price.

The revolutionary effect of the rule appears clearly in its application to the pricing practices of Firestone Tire and Rubber Company as those practices were described at the public hearing. Firestone asserted that it has no cost-plus contracts and that its lowest price is available to any buyer who takes an annual volume of $250,000 a year. This annual volume is well within the figure of $600,000, which has been selected by the majority as the critical figure. If, therefore, the Commission were to announce a rule based upon its findings as to annual volume, the rule would not affect Firestone's discount structure. The rule actually adopted, however, will require Firestone to discard its volume discounts even though these are not subjected to attack in the majority finding, and instead to adopt a system of carload discounts, on pain of being no longer free to invoke the cost defense in a price discrimination proceeding. Firestone is not found to be doing anything harmful, but is nevertheless required to reform.

There is no sound basis, however, even for a rule limiting the annual volume to which price concessions may be applied. Arguments of public policy may be advanced against developments in the distributive trades which substitute a relatively small number of organizations doing business nation-wide for a much larger number of smaller concerns. But these arguments are for the Congress; our mandate is only to preserve competition. The mere fact of change in the scale upon which business is done is not automatic evidence of jeopardy to competition. Whether rightly or wrongly, the Congress wrote the statute in such a way that savings in the distributive process can be reflected in price difference except where the fewness of those who receive the lower prices is such as to be unjust or promote monopoly.

In the present proceeding, the majority finds such objectionable fewness in the fact that there are 63 mass distributors. The information before the Commission does not show over how much of the country each of these mass distributors does business nor how many of the 63 do business in competition with each other in each locality. The fact that they are mass distributors implies strongly that they do business over a wide area and perhaps throughout the nation. Since the distribution of tires takes place in local markets, the significant question in determining fewness is not how many tire distributors there are in the nation as a whole but how many there are in effective competition with each other. Lacking any showing as to this fact, the Commission must assume that most, if not all, of the 63 would be found in competition with each other in any local tire market which may be examined. Thus, the significant question before the Commission is whether, when a number of concerns approaching 63 compete with each other in a particular market, these concerns are so few as to create difficulties for the maintenance of competition in that market. It is impossible to place an exact numerical value upon the concept of objectionable fewness, but surely concerns become few enough to endanger competition when their number is something on the order of three, six or nine and not something on the order of 63. If 63 competitors in a local market are to be regarded as few enough to raise an inference of a trend toward monopoly, such a trend must be inherent in the fewness of the companies in a large proportion of our manufacturing industries; for in 1947 there were 111 such industries that did not have as many as 63 concerns altogether. To regard so many enterprises as the objectionable few is to deprive the term "few" of reasonable meaning.

The concept of price discrimination that has been used in this proceeding is equally loose. At first glance, the spread in prices from the highest to the lowest appears to be unusually wide, not only as between the smallest volume bracket and the largest but even within the smallest volume bracket. However, the price data that have been used in computing these spreads are not properly comparable. Prices paid by dealers at their own places of business, which include transportation charges, have been compared with prices paid by mass distributors at the factory door, which do not include transportation charges. No adjustment has been made for the fact that some mass distributors own the rubber from which their tires are made or the moulds in which the manufacture takes place, or waive the right enjoyed by the dealer to return defective tires. Less significant, but still worth noting, is the fact that no effort has been made to distinguish between prices paid in wholesale transactions by concerns that resell their tires to other dealers and prices paid in retail transactions by concerns that resell to the ultimate consumer. The evidence in the public record is not sufficient to permit such adjustments to be made, and it is questionable whether even the evidence in the Commission's files would be adequate for the purpose. In the absence of these adjustments, however, the Commission does not have before it a correct showing of the size of the price advantages enjoyed by the larger buyers.

Moreover, the majority has reasoned that every price difference which appears in the record reflects an equivalent advantage to the concern paying the lower price. Where some buyers pay the transportation and others do not, it is obvious that a price concession equal to the transportation cost incurred by the buyer gives him no advantage at all. Similarly, he obtains no advantage from price concessions which merely recognize other items of expense that he may be required to assume. There was uncontradicted testimony at the public hearing that the larger distributors have higher expenses than the smaller dealers because they undertake a larger amount of wholesaling, and to this end carry a larger stock of the slower-moving tires. There was also uncontra-

[1] The quantity which is set as the limit is defined, not as an actual carload of tires, whatever it may weigh, but as an arbitrary weight of 20,000 pounds, whether or not that amount fills a car. Tires of different sizes differ in bulk and weight so that there is no weight which always constitutes a carload. In adopting 20,000 pounds as the equivalent of a carload, the majority have conformed to the customary language of the industry. They have, however, destroyed any basis which they may have had for asserting that the discount upon the so-called carload is justified by economies in shipment due to freight rates. Although they have rejected rules based upon annual volume because the volume selected would be arbitrary, they have adopted a rule based upon an arbitrary amount bought in a single purchase.

dicted testimony that mass distributors incur extra expenses for shipment, storage, assumption of risks of variation in quality, investment in materials and equipment, and various other items. There was also uncontradicted testimony at the hearing that mail order houses sell tires to the consumer more cheaply where they do not mount tires on wheels or give trade-in allowances for old tires. The majority have attempted no adjustment of their figures to take account of such considerations. Ignoring all such testimony, they have presumed that every reduction of the purchase price can be fully reflected in the resale price or else constitutes an additional margin that can be used to enhance sales effort or profit. Consequently, they have made no satisfactory showing as to whether or not there are discriminations sufficient to affect competition adversely.

The evidence before the Commission as to the dangers of monopoly in the manufacture and distribution of tires is so fragmentary and inconclusive as to be incapable of supporting a finding.

The Commission has looked for a trend toward monopoly both among tire distributors and among tire manufacturers.

In the case of distributors the majority has attempted to show that the mass distributors have achieved dominance. Their own figures demonstrate, however, that the 63 concerns which they regard as the statutory few made, in the aggregate, not quite 29 percent of the purchases of replacement tires and tubes in 1947. They have endeavored to lend weight to this unimpressive percentage by showing that the 63 distributors constitute a very small percentage of the total number of distributors and by showing that the average size of the distributors in the three largest volume brackets is, respectively, 163, 1,121, and 5,150 times larger than that of the average distributor in the smallest volume bracket. If this type of comparison is to be regarded as significant, it can be used to demonstrate a dangerous concentration even in the most diffused of industries. The smallest farm, for example, may be a truck garden of 10 acres, and the largest farm a Western ranch with 100,000 acres; yet there is no monopolistic significance in the fact that the second is 10,000 times the size of the first.

To bolster the conclusion that there is danger of monopoly among distributors, the majority adopted certain figures which were presented by some of the critics of the proposed order at the public hearing. They find that the percentage of replacement sales made by independent dealers declined from about 90 percent in 1926 to about 48 percent in 1941, rose to about 52 percent in 1946, and dropped to slightly less than 52 percent in 1947. They interpret these figures as evidence of a trend toward the destruction of the independent due to the price concessions granted to the mass distributors. At the public hearing, other critics of the proposed order asserted that a part of the apparent decline was a statistical illusion, due to the fact that classes of distributors which were included in the independent dealer group in 1926 were reported separately in later years. They also asserted that a considerable part of the apparent decline of independent dealers reflected changes in the tire and automotive industries, such as the fact that tires became easier to install and were therefore bought more readily from gasoline filling stations and that the good-roads movement, together with the growth of motor travel, had led to the establishment of a large number of filling stations on the open highways where the volume of tire business was insufficient to support the old-fashioned kind of independent tire dealer. The majority has ignored these interpretations without determining their truth or falsity.

But even if the trend figures are accepted without qualification, their significance for the present proceeding is far from clear. The decline in the status of the independent dealer took place between the 1920's and the outbreak of the Second World War. The position of the independent dealer improved from 1941 to 1946, presumably because the scarcity of tires increased the demand for well-known brands and for careful service. The available figures cover only one year subsequent to 1946 and show a decline of only a fraction of one percent in that period. The pre-war trend can be plausibly projected into the postwar period on the presumption that the war represented aberration; and with equal persuasiveness, conditions of postwar inflationary boom and of quasi-scarcity under the defense program can be presumed to supply a setting so different from that of the depression of the thirties as to make it improbable that the future of the tire industry will resemble its past. The downward trend upon which the majority relies ended ten years ago, except for a fractional change in a single year. The record of the public hearing contains uncontradicted statements that between 1937 and 1947 independent tire dealers doubled their sales of tires by number, tripled their dollar volume, and very nearly doubled their profit on sales.

The record also casts doubt upon the assertion that the mass distributors threaten the existence of the so-called independents. Instead, there is asserted to be a considerable amount of cross-purchase between distributive channels. It is estimated by one of the manufacturers that about half of the filling stations acquire all or a major part of their tires from manufacturers and dealers rather than from oil company distributors and that about half of the business of the filling stations that distribute oil company brands consists of tires not promoted by the oil companies. There are also statements in the record that more than 1,400 dealers bought their tires from Montgomery Ward, that nearly 6,000 dealers bought tires from 80 different retail chains, and that more than 40 percent of the United States tires sold to filling stations under arrangements with the oil companies were sold by tire dealers rather than by manufacturers. The majority have not sought to determine the facts concerning those assertions, but have given them no weight in reaching their conclusions.

As to monopoly among manufacturers, the majority relies primarily upon a table which purports to show that the seven largest manufacturing companies, considered as a group, supply a larger proportion of the purchases by large distributors than of the purchases by small distributors. Even if this statement were unquestionably true, its significance would not be beyond dispute. However, its truth is far from clear. There is a direct contradiction between figures compiled by the Commission's staff, which support the conclusion, and figures compiled by the four largest manufacturers, which tend to refute it. Moreover, the Commission's figures do not withstand close analysis. Staff memoranda seeking to refute the figures submitted by the manufacturers assert that the largest seven manufacturers supplied more than 88 percent of the total purchases of customers buying more than $100,000 a year, as compared with slightly more than 84 percent of the total purchases of customers buying less than that annual volume. But when the figures of the Commission's staff for the individual manufacturers are analyzed, the picture changes. Three of the largest seven, including only one of the largest three, served the larger customers more heavily than the smaller customers. The other four of the largest seven, including two of the largest three, served the smaller customers more heavily than the larger customers. One of the seven manufacturers concentrated his sales very heavily upon the larger customers and one very heavily upon the smaller customers. In the case of the others, the difference in either direction was relatively moderate. Thus, on the basis of the Commission's own figures, the striking thing is not the uniformity with which large manufacturers serve mass distributors but rather the diversity with which certain large manufacturers serve primarily the mass distributors while others serve primarily the smaller distributors.

The majority reinforce their finding of a danger of monopoly among manufacturers by findings as to the trend of manufacturing concentration over a period of time. They find that there were 100 manufacturers in 1926 and only 21 in 1947, and that the seven largest did over 86 percent of the business in the latter year. They drew these figures from statements submitted by interested parties; yet they have ignored a study submitted on behalf of the tire manufacturers which asserts that in 1947 the largest four manufacturers owned 65.5 percent of the total domestic assets of the rubber industry as compared with 73.3 percent in 1938, and that in 1947 these four manufacturers made 68 percent of the replacement sales of tires and tubes as compared with 67 percent in 1932. The majority also ignore uncontradicted assertions in the hearings that between 1929 and 1938 the earnings of the smaller companies were higher than those of the larger companies. They have not chosen to take notice of figures made public by the Secretary of Commerce in 1949, which show that in 1947 the largest four manufacturers of tires and inner tubes shipped 76.6 percent of the industry's total value of shipments as compared with 80.9 percent in 1935, and that the largest eight of these concerns shipped 89.6 percent in 1947 as compared with 90.4 percent in 1935. Though these figures, like those upon which the majority rely, show a relatively high degree of concentration in the manufacture of tires and tubes, they tend to disprove the conclusion that there is a continuing trend toward monopoly in the tire manufacturing industry.

The majority have assumed, without determining on a basis of fact, that if there is a condition of oligopoly or an increasing concentration in the manufacture of tires and tubes, it is due to the existence of the mass distributors and to the influence of discriminatory price policies in selling to them. In making this assumption, they have ignored the testimony of one of the small manufacturers, Lee, at the public hearing, to the effect that without the oil companies as an intermediary to reach its 19,000 dealers, it would be unable to hold its business because of its inability to provide warehousing, sales, credit, and collection services.

In seeking to reinforce their conclusions concerning a trend toward monopoly among manufacturers, the majority says that information before the Commission warrants the belief that since 1947 two of the largest manufacturers have taken business away from a smaller manufacturer by lower prices in such quantity as to jeopardize the smaller concern's independent existence, and also the belief that "perhaps as many as four" of the 21 manufacturers existing in 1947 have "ceased to function or to function independently." This is a striking example of the use of information not exposed to critical comment and therefore of uncertain validity.

In summary, the majority have invoked the quantity limit proceeding improvidently before exploring the adequacy of other remedies. They have built their case upon alleged facts that have not been adequately tested by disclosure and criticism. They have adopted a concept of fewness which, if it were generally applied, would mean that 111 American industries have so few enterprises as to be in danger of monopoly. They have used the conception of price discrimination so loosely as to deprive the record of valid price comparisons. They have exaggerated the importance of allegations supporting the view that there is danger of monopoly in the manufacture and distribution of tires and have ignored or minimized conflicting allegations, thereby arriving at the conclusion that such danger exists in the face of a record too weak to justify firm conclusions. On this precarious basis they have found that economies in distribution must not be recognized as a basis for price concessions where such economies arise out of annual purchases in excess of $600,000 a year. By a tour de force they have then converted this conclusion into a justification for a rule preventing the recognition of economies that arise out of any annual volume of purchase, small or large, and limiting the cost justification to single transactions not in excess of 20,000 pounds. The finding of the majority as to annual volume is not substantially supported by facts developed; their finding as to a carload limit is supported by no significant facts whatever.

The statement which accompanies the rule clearly indicates that, in the opinion of the majority the effect of the rule is to preclude the justification of price concessions that are due to different methods of manufacture or distribution as well as of price concessions that are due to different quantities. The majority arrives at this result by two different roads. First, it assumes that any difference in method which is associated with the purchase of a large quantity is due to quantity. Thus it assumes that all of the price concessions based upon method of manufacture which are received by the mass distributors are covered by the rule, even though this rule is directed solely at price concessions based upon quantity. But the question whether a particular saving in manufacture or distribution is derived from a method of sale or delivery or from the quantity sold or delivered is a question of fact. I do not believe that the Commission's fiat can arbitrarily destroy the difference in the two types of savings or that as to future cases the Commission can make a finding in announcing the rule and prior to examining the facts of each case and thus relieve itself of the duty to consider those facts and decide whether they show that a specific price concession is due to quantity or to method.

The second road followed by the majority is to contend that when the statute was amended after the Goodyear case, the amendment made the quantity limit provision applicable to methods and quantities alike. This conclusion is reached on the ground that a different conclusion would be unwelcome because it might limit the applicability of the quantity limit rule. By a logic which I cannot follow, the majority concludes that the quantity limit proviso of the statute is intended to cover methods as well as quantities, in the face of the fact that this proviso makes no reference to economies due to methods of sale or delivery and in this respect differs from the provision as to cost defenses that immediately precedes it in the text of the statute. I think the law means what it says rather than what the majority would have liked it to say.

Even if the factual and legal justification for the quantity limit rule were sound, the promulgation of the rule would be regrettable because of the effects that are to be foreseen from it. The predictions of the majority as to the benefits of the rule are very modest. They say that with the rule in effect, the evil conditions in the replacement tire industry may not continue and worsen, and that in any event the capacity of the Act should be exhausted in an attempt to remedy the evil. If there are evils of price discrimination in this industry, a matter which has not been established in this proceeding, it may be that close study would enable the Commission to devise an appropriate remedy for them.

The present rule, however, is no such remedy. The public hearing disclosed that there are already in the tire industry types of relationships not amenable to the quantity limit rule even under the Commission's broad interpretation of its scope. One of these is the payment of sales commissions to oil companies on tire sales from manufacturer to filling station in which the oil company does not take title to the tires. Another is the employment of the tire manufacturer by a mass distributor to manufacture tires for the distributor on contract in return for a processing fee, and without ownership of the tires or the materials by the manufacturer. There may be others. It is also obvious that some mass distributors already avoid the impact of the law of price discrimination by making their own tires or by contracting to take the entire output of a manufacturer. A rule which prevents the buyer from obtaining the benefit of actual economies in distribution puts a premium upon the adoption of methods such as these designed to evade the rule. A collateral effect of such evasion will necessarily be the growth of vertical integration in the tire industry, accompanied by an increase in the total size of the business units that undertake such integration. I cannot regard the use of the law to produce such results as a contribution to the maintenance of competition.

It is obvious, too, that the promulgation of the rule may hurt various types of business enterprises which do not have the numbers and resources to make a forceful presentation of their case. One tube manufacturer testified at the public hearing, for example, that when the lowest permissible price applies to a carload of tires and tubes, the effect will be to induce the buyer of tubes to obtain them where he gets his tires, and that, in consequence, specialized tube manufacturers, like the witness, will be jeopardized.

The National Grange and the Missouri Farmers' Association filed objections to the proposed rule on the ground that it would interfere with the purchase of tires by cooperatives and decrease the number of tire outlets. The North Carolina Motor Carriers Association opposed the rule on the ground that common carriers would be deprived of the benefits of economies inherent in their large purchases.

Even the National Association of Independent Tire Dealers, which wants some quantity limit rule, opposed the one that is now issued; it asserted that if price concessions could not be made upon the basis of differences in methods of sale, manufacturers would cease selling to the smaller dealers and thereby decrease the bargaining power of these dealers in acquiring tires through the larger dealers. There was also testimony that the use of company stores by manufacturers would be likely to increase.

On behalf of the consumer it was argued that one effect of the rule would be to make it difficult for consumers who wished limited service at lower prices to buy tires on that basis.

I hope that these fears are exaggerated. However, on their face they are at least as reasonable as the fears of the majority lest the independent tire dealers be destroyed by the mass distributors. It is a matter for regret that the Commission did not make an investigation solid enough to permit an evaluation both of the alleged dangers of not promulgating the rule and of the alleged dangers that would follow if the rule were promulgated.

Even if there were facts upon which the majority could, without being arbitrary, base their findings that purchasers of quantities in excess of $600,000 annually were so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly, the rule which they are promulgating would, in my opinion, still be invalid. This is because there is no real relationship between the finding made and the quantity fixed in the rule itself. In order to support the rule the majority would have to find that purchasers of quantities greater than 20,000 pounds by single order for single delivery are so few as to make differentials on account thereof unjustly discriminatory or promotive of monopoly. This the majority cannot do for there are no facts before them to warrant it.

Not only does the finding not support the rule, but the rule would deprive parties of rights to which the finding actually made entitles them. Whatever savings might be accomplished as between sales of 20,000 pounds, by single order for single delivery, and sales which did not exceed $600,000 annually may not be reflected in price without violating the rule. Having made the finding which they did, the majority cannot further control sales methods on quantities which do not exceed the $600,000 annual volume stated in the finding nor prohibit sellers from reflecting in their prices any resulting savings in cost.

It seems clear to me that the action of the majority upon the facts before them was improvident and arbitrary. In my opinion, the rule is invalid for failure to comply with statutory requirements and for exceeding the authority delegated to the Commission by the statute.

I am against it.

LOWELL B. MASON,
Commissioner.

[F. R. Doc. 52-14; Filed, Jan. 2, 1952; 8:48 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

Subchapter E—Navigation Requirements for the Great Lakes and St. Marys River

[CGFR 51-62]

PART 92—ANCHORAGE AND NAVIGATION REQUIREMENTS; ST. MARYS RIVER, MICHIGAN

REVISION OF PART

A notice regarding the anchorage and navigation regulations for the St. Marys River, Michigan, was published in the FEDERAL REGISTER dated October 5, 1951 (16 F. R. 10161, 10162), and a public hearing was held by the Commander of the Ninth Coast Guard District on November 15, 1951, in the Keith Building, Cleveland, Ohio.

All comments and suggestions submitted at the public hearing were considered by the Merchant Marine Council and changes in the regulations have been made.

The purpose for the regulations designated as 33 CFR Part 92 is to establish the requirements governing the movements and anchorage of vessels and rafts in the St. Marys River from Point Iroquois on Lake Superior to Point Detour on Lake Huron. The changes in the regulations correct omissions, identify correctly certain buoys and landmarks, establish speed and passing rules suitable for present day operations, and includes other editorial changes. There has been no change in the text of the sections designated 92.03, 92.05, 92.07, 92.13, 92.25, 92.27, 92.29, 92.31, 92.33, 92.35, 92.37, 92.41, 92.43, 92.47, 92.55, 92.59, 92.63, 92.67, 92.69, 92.71, 92.73, 92.75, 92.77, 92.79, 92.81, which were formerly designated §§ 92.01, 92.02, 92.03, 92.06, 92.2, 92.3, 92.4, 92.5, 92.6, 92.7, 92.8, 92.10, 92.11, 92.13, 92.17, 92.19, 92.21, 92.23, 92.24, 92.25, 92.26, 92.27, 92.28, 92.29, 92.30, respectively.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order dated July 31, 1950 (15 F. R. 6521), to promulgate regulations in accordance with the statute cited with the regulations below, the following amendments to the regulations are prescribed and shall become effective thirty days after date of publication of this document in the FEDERAL REGISTER:

AUTHORITY: §§ 92.1 to 92.83 issued under secs. 1–3, 29 Stat. 54–55, as amended; 33 U. S. C. 474.

§ 92.1 *General instructions.* The regulations in this part control vessel traffic in the United States waters of the St. Mary's River between Point Iroquois and Point Detour, except the waters of the St. Marys Falls Canal. These regulations in this part shall not be considered to cover all of the obligations imposed by the law upon vessels and their operators, and shall not be construed as relieving the owners or persons operating vessels from any penalties which might be incurred in the violation of any of the general laws relating to shipping on the Great Lakes and tributary waters, or a violation of regulations issued pursuant to such laws.

§ 92.3 *Captain of the Port.* The Coast Guard officer to whom is assigned the duty of enforcing the rules and regulations in this part is designated "Captain of the Port." His office is at Saulte Ste. Marie, Mich.

§ 92.5 *St. Marys River patrol.* The St. Marys River patrol comprises all of the personnel and equipment of the Coast Guard employed by the captain of the port in the enforcement of the rules and regulations in this part.

§ 92.7 *District engineer.* The officer of the United States Army Engineers in charge of the district is authorized to declare any channel closed when by reason of low water, obstruction, or obscurity in the channel or other cause, he deems such action necessary for the safety of shipping; and under contrary circumstances, or for the expediting of vessel passage, to declare any channel open. He or his local representative decides the proper disposition of dredging and wrecking outfits legally engaged in improving or clearing a channel, and the allowable maximum speed and draft of vessels in channels which are impaired temporarily. His decisions with respect to the foregoing are duly communicated to the captain of the port. The movements of vessels in the St. Marys Falls Canal are under the direction of the district engineer or his local representative.

§ 92.9 *Lookout stations.* Lookout stations of the St. Marys River patrol are numbered and located as follows:

No. 1 on Johnson Point, Sailors Encampment, Middle Neebish Channel.

No. 3 off Mission Point, Little Rapids Cut.

No. 4 at upper end of Rock Cut, West Neebish Channel.

No. 6 off Brush Point, upper St. Marys River.

§ 92.11 *Dispatch boats.* (a) A dispatch boat of the river patrol is customarily located at each of the following places:

(1) Sailors Encampment Mill Dock, Neebish Island.

(2) In the vicinity of Dike Cut, Middle Neebish Channel, or Rock Cut, West Neebish Channel.

(3) At the wharf of Big Point, upper St. Marys River.

(b) These boats are used to direct anchorage and movements of vessels in their vicinity.

§ 92.13 *Routing of traffic in channels.* The routing of traffic through the several dredged channels is contingent upon the physical conditions in them; and the vessel masters should be prepared upon notice from the patrol, or through published notification, to follow such alternate route as may be prescribed, or to proceed with caution. Under normal conditions traffic passes up the Middle Neebish Channel, and down the West Neebish Channel; but it may be necessary in emergency to pass two-way traffic in either of those channels. It may also become necessary to close either or both channels for a short time owing to obscurity of navigation marks, in which case vessels should be prepared to anchor and wait a clearing away of obscurity.

§ 92.15 *Visual signals at lookout stations.* (a) The following signals are hoisted at patrol lookout stations to indicate changes in the conditions of channel passage, and masters of vessels approaching the entrances to the several channels should be on the alert for such signals:

(1) *Closure of channel.* Indicated by two red balls by day, two red lights by night, hoisted vertically about 6 feet apart.

(2) *Channel partially obstructed.* Indicated by a red ball over a white ball by day, a red light over a white light by night, hoisted vertically about 6 feet apart.

(3) *Special signal for No. 1 Lookout Station.* Displayed when a down-bound vessel enters the Dark Hole while an up-bound vessel is between Everens Point and Johnson Point. Indicated by a white ball by day, a white light over a red light by night, hoisted vertically about 6 feet apart.

(4) *Tow signal for No. 1 Lookout Station.* Displayed when a down-bound tow enters the Dark Hole while an up-bound vessel is between Everens Point and Johnson Point. Indicated by a white ball over a red ball by day, a white light over two red lights by night hoisted vertically about 6 feet apart.

(b) Boats of the patrol may carry the signal described in paragraph (a) (1) of this section, as required. Signals described in paragraphs (a) (3) and (4) of this section will be used only when two-way traffic is being passed through Middle Neebish Channel.

§ 92.17 *Temporary closure of Middle Neebish Channel.* With two-way traffic passing through West Neebish Channel, closure and obstruction signals will be shown from Lookout Station Nos. 1 and 3. With one-way traffic in the channel, the signals will be shown from Lookout Station No. 1.

§ 92.19 *Temporary closure of West Neebish Channel.* With two-way traffic passing through West Neebish Channel, closure and obstruction signals will be shown from Lookout Station Nos. 3 and 4. With one-way traffic in the channel, the signals will be shown from Lookout Station Nos. 3 and 4.

§ 92.21 *Sound signals used by patrol.* (a) Two short blasts and one long blast of whistle or horn indicate that the signalling unit desires to speak a passing vessel, and the signaled vessel will check speed and await orders. Vessels should use this signal to speak a lookout station or passing patrol boat.

(b) Three long blasts of whistle or horn indicate that the vessel signaled is moving at too high a rate of speed. This signal may be used by dredging and wrecking plants working in channels.

§ 92.23 *Definitions.* (a) The word "vessel," as used in this part, shall be held to include all types of floating craft and equipment. Where special provisions apply only to rafts, dredges, etc., the type will be specified by its class designation.

(b) Speed limits established in this part are expressed in terms of statute miles per hour over the ground.

§ 92.25 *Obedience to instructions.* All persons in charge of or operating vessels in the St. Marys River are required to yield prompt and implicit obedience to the directions of the captain of the port and the officers and men of the St. Marys River patrol, acting under his instructions, in connection with the enforcement of the rules and regulations in this part.

§ 92.27 *Anchorage grounds.* The authorized anchorage grounds are those areas outside of the dredged channels, and clear of the steering courses in other portions of the St. Marys River, between Point Iroquois and Point Detour. Vessels shall be anchored so as not to swing into channel limits or across steering courses.

§ 92.29 *Emergency anchoring.* A vessel may be permitted in an emergency, due to breakdown of machinery or other accident or obscurity of navigation marks, to anchor in a dredged channel; but the vessel shall be anchored as near the edge of the channel as possible, and shall get under way and proceed as soon as the emergency ceases, unless otherwise directed.

§ 92.31 *Forbidden anchorage.* It is forbidden to anchor a vessel at any time in the area to the southward of the Point aux Pins Range, lying between Lookout Station No. 6 and the waterworks intake crib off Big Point; also within a quarter mile of the said intake crib in any direction.

§ 92.33 *Dredging and wrecking plants in channel.* Duly authorized dredging and wrecking plants, when engaged in improving or clearing a channel, will be permitted to anchor or moor in the channel under such conditions as may be prescribed by the district engineer or his local representative.

§ 92.35 *Shifting anchorage when directed.* The captain of the port, or the St. Marys River patrol acting under his instructions, is empowered to cause any anchored vessel to shift anchorage when and as directed, whenever in the judgment of the enforcing officer such action is deemed necessary for the safety of vessels, the safe or expeditious passage of shipping, or the preservation or effective operation of Government installations. In enforcing this section the officer will have due regard for the hazards of navigation and vessel handling which may exist at the time, and under such circumstances will permit a reasonable delay in compliance by the vessel directed to move.

§ 92.37 *Order of departure from anchorage.* Whenever vessels collect in any part of the river or on anchorage grounds, by reason of temporary closure of channel or impediment to navigation, the order of getting under way and proceeding by the vessels so collected shall be the order in which they arrived at the place of assembly, unless otherwise directed by a unit of the patrol. The patrol is authorized to advance any vessel in the order of procedure to expedite the movement of mails, passengers, or cargo of a perishable nature, or to facilitate passage through the locks as indicated to the patrol by the officer in charge of the St. Marys Falls Canal.

§ 92.39 *Visual signals for dredges and wrecking plants.* Dredges and wrecking plants while engaged in working on the St. Marys River shall display the visual signals prescribed for them by the Department of the Army.

§ 92.41 *Visual signals on vessel aground in channel.* A vessel aground in a dredged channel shall carry from sunset to sunrise in addition to the white light or lights prescribed for a vessel at anchor, two red lights hoisted vertically not less than 3 feet apart, in such position and height as to be readily visible to vessels bound up and down the channel.

§ 92.43 *Sound signal for vessel aground in the channel.* A vessel aground in a channel shall sound several short and rapid blasts of her whistle, not less than five, upon the approach of another vessel bound up or down the channel. If the approaching vessel cannot pass with safety, she shall stop and make proper dispositions to avoid fouling the grounded vessel, and shall upon the approach of another vessel coming up astern sound the same signal. Should additional vessels approach from that same direction, it shall be the duty of the last vessel in line to sound this signal. In times of low visibility, the signal described herein shall be in addition to the prescribed fog signal.

§ 92.45 *Special sound signal for Middle Neebish Channel.* In passing through Middle Neebish Channel, a downbound vessel shall sound a 10-second blast of her whistle when abreast of Coyle Point and an upbound vessel shall sound the same signal when abreast of Everens Point.

§ 92.47 *Temporary closure of channel.* A vessel approaching a channel entrance and observing that the closure signal is shown, or upon being advised by the patrol that the channel is closed, shall come to anchor and not proceed through the channel until the closure signal is lowered, or instructions are received from the patrol to proceed.

§ 92.49 *Speed limit between Everens Point and Big Point.* (a) Vessels of 500 gross tons or over shall at no time exceed a speed of 12 statute miles per hour over the ground between the following points in the St. Marys River:

(1) Upbound:

(i) Everens Point and Lake Nicolet Lighted Buoys Nos. 63 and 64.

(ii) Six-Mile Point Range Rear Light and Big Point.

(2) Downbound:

(i) Big Point and Six-Mile Point Range Rear Light.

(ii) Nine-Mile Point and lower end of West Neebish Channel.

(b) Vessels of 500 gross tons or over may, subject to the limitation of § 92.65, proceed at a speed of not over 15 statute miles per hour over the ground in the following sections of the St. Marys River:

(1) Upbound between Lake Nicolet Lighted Buoys Nos. 63 and 64 and Six-Mile Point Range Rear Light.

(2) Downbound between Six-Mile Point Range Rear Light and Nine-Mile Point.

(c) As a temporary measure extending to the end of the 1952 season of navigation, vessels of 50 gross tons or over, either upbound or downbound, shall not exceed a speed of 10 statute miles per hour over the ground in the area between Lookout Station No. 3 and Six-Mile Point Range Rear Light. The speed limit for vessels of 500 gross tons or over prescribed by paragraph (a) of this section is temporarily modified to the extent required by this paragraph.

§ 92.51 *Speed limit in Middle Neebish Dike Cut, the West Neebish Rock Cut, and the Sailors Encampment Channel.* Vessels of 50 gross tons or over shall at no time exceed a speed of 10 statute miles per hour in the Middle Neebish Dike Cut, the West Neebish Rock Cut, or the Sailors Encampment Channel below Johnson Point.

§ 92.53 *Speed limits; two-way traffic.* When one of the lower channels is closed, making it necessary to accommodate two-way traffic in the Middle Neebish or the West Neebish Channel, vessels of 500 gross tons or over shall not exceed a speed of 10 statute miles per hour in the following named reaches:

(a) Between Everens Point, Lake Munuscong, and Nine-Mile Point, Lake Nicolet.

(b) Between Nine-Mile Point, Lake Nicolet, and the lower end of West Neebish Channel in Lake Munuscong.

§ 92.55 *Speed limit approaching St. Marys Falls Canal.* Vessels approaching the St. Marys Falls Canal shall at all times reduce speed to the extent of being under full control with ability to maneuver in accordance with the instructions of the officers in charge of the St. Marys Falls Canal before entering the canal.

§ 92.57 *Pipe Island passages.* Vessels of 500 gross tons or over shall leave Pipe Island Shoal and Pipe Island on the port hand in passing them, except that upbound vessels intending to stop at one of the Detour coal wharves above Watson Reefs may pass to the westward of the shoal and island.

§ 92.59 *Directional Neebish Channels.* When both the Middle Neebish Channel and the West Neebish Channel are available to traffic, vessels of 100 gross tons or over shall pass upbound through Middle Neebish Channel and downbound through West Neebish Channel. Vessels over the prescribed tonnage making regular local stops in either of those channels may run counter to the general traffic direction only on written permit issued by the captain of the port, for such term and under such conditions of renewal or revocation as he may prescribe. A vessel thus running counter to the general traffic shall keep off the channel range when an approaching vessel is on or entering that range.

§ 92.61 *Passing and approach in channels.* (a) In a channel where the speed is restricted to 12 miles an hour or less, no vessel of 500 gross tons or over shall approach nearer than one-quarter of a mile to a vessel bound in the same direction, nor pass such a vessel except between Little Rapids Cut Lighted Buoy 87 and the St. Marys Falls Canal, and for upbound vessels, only between Vidal Shoal and Big Point or except as provided in paragraph (b) of this section and § 92.63.

(b) In order to facilitate passing in Lake Nicolet, upbound vessels may, after passing Lake Nicolet Lighted Buoy No. 58 off Shingle Bay, approach not nearer than 500 feet to a vessel bound in the same direction.

§ 92.63 *Vessel passing towing tug going in same direction.* A vessel at normal speed coming up on a tug towing a dredge or scow bound in the same direction as the overtaking vessel in a restricted channel may pass such tow, after the prescribed exchange of signals. Under such circumstances the tug shall not increase speed during the passing, and shall haul with its tow to the proper side of the channel to allow passing room.

§ 92.65 *Vessels going in same direction; when passing prohibited.* No vessel shall pass or attempt to pass another vessel bound in the same direction, when such passing would bring more than 2 vessels abreast, in any of the passages between the intersection of the Winter Point and Pilot Island Ranges in Lake Munuscong and Big Point in upper St. Marys River, except that such passing is permitted between Little Rapids Cut Lighted Buoy No. 87 and the St. Marys Falls Canal.

§ 92.67 *Towing vessels; hauling clear of ranges; tow lines.* (a) Towing vessels engaged in shortening or lengthening tows or dropping or making up tows, mooring or unmooring or anchoring or hoisting anchor, loading or discharging stores or cargo from boats alongside, or awaiting supply boats, shall haul clear of the ranges and permit unobstructed passage to other vessels.

(b) On the connecting waters of the Great Lakes between Point Iroquois, upper St. Marys River and Frying Pan Island, lower St. Marys River, the length of tow lines shall not exceed by more than 50 feet, the length of the scow, barge, vessel, or other craft being towed: *Provided,* That no scow, barge, vessel, or other craft shall be required to have a tow line less than 250 feet. The length of the tow line shall be measured from the stern of one vessel to the bow of the following vessel.

§ 92.69 *Dropping of towed vessels.* Towed vessels shall not be dropped in any of the usual steering courses, but shall be hauled clear of the course before being left by the towing vessel.

§ 92.71 *Speed through dredged channels.* The minmum speed at which any vessel or tow will be permitted to make regular passage through any dredged channel shall be 5 miles an hour over the ground; and any craft which cannot make this speed shall not enter any of the channels until the patrol has been communicated with, and directions received as to further procedure.

§ 92.73 *Navigation of dredged channels by sail.* Vessels of 10 gross tons or over shall not navigate any dredged channel under sail power; and such vessel capable of propulsion by both machinery and sail shall not carry sail in any of the dredged channels.

§ 92.75 *Obstruction of traffic; retarding other vessels.* No vessel shall maneuver so as to affect adversely the relative position of another vessel when entering any of the cuts, nor attempt to obstruct traffic, nor unnecessarily retard a following vessel, nor increase speed after having signalled permission to an overtaking vessel to pass.

§ 92.77 *Rafts in channels.* No raft shall enter any of the dredged channels between Everens Point and the improved channel above Round Island without first having communicated with the patrol and obtained permission and directions as to route and procedure. So long as rafts are in any portion of the passages between the points named they shall be under the control of the patrol, and shall obey all instructions as to time and manner of movement or stoppage. They shall use the Lake George Channel when it will serve their passage toward destination.

§ 92.79 *Reporting obstruction of channel.* A vessel observing an obstruction of the channel caused by an accident of any nature at any point in the St. Marys River, between Point Detour and Point Iroquois, shall report the same to the canal office or the first lookout station or boat of the patrol passed.

§ 92.81 *Government vessels.* Vessels when signalled to do so shall give way to boats of the St. Marys River patrol, and to United States vessels on duty in connection with the maintenance of channels, and accord the right of way to such boats and vessels.

§ 92.83 *Small craft.* (a) Motorboats as defined by section 1 of an act of Congress approved April 25, 1940 (54 Stat. 163; 46 U. S. C. 526), shall be considered amenable to the provisions of §§ 92.25 to 92.31, inclusive, 92.35, 92.79, and 92.81.

(b) Sail vessels under 10 gross tons shall be considered amenable to the provisions of §§ 92.25 to 92.31, inclusive, and 92.35.

Dated: December 28, 1951.

[SEAL] A. C. RICHMOND,
Rear Admiral, U. S. Coast Guard, Acting Commandant.

[F. R. Doc. 52-57; Filed, Jan. 3, 1952; 8:48 a. m.]

Subchapter L—Security of Waterfront Facilities

[CGFR 51-59]

PART 125—IDENTIFICATION CREDENTIALS FOR PERSONS REQUIRING ACCESS TO WATERFRONT FACILITIES OR VESSELS

IDENTIFICATION CREDENTIALS

Pursuant to the authority of 33 CFR 6.10-3 in Executive Order 10173, as amended by Executive Order 10277 (15 F. R. 7007, 3 CFR, 1950 Supp. 16 F. R. 7537) the Commandant may define and designate those categories of vessels and waterfront facilities wherein any person seeking access shall be required to carry identification credentials as prescribed in 33 CFR 6.10-7 and 125.11. The purpose of the following amendment to 33 CFR 125.37 (a) is to postpone the effective date from "January 1, 1952" to "April 1, 1952" because it has been determined that the average percentage of crews holding identification credentials is approximately 40 percent. The regulation designated 33 CFR 125.37, was published in the FEDERAL REGISTER dated August 21, 1951 (16 F. R. 8273), and requires identification credentials for crews on towing vessels or barges engaged in trade on the Great Lakes or the western rivers. Since the security interests of the United States called for the aforesaid application of the provisions of 33 CFR 6.10-5 at the earliest practicable date and because of the national emergency declared by the President, it is found that compliance with the notice of proposed rule making, public rule making procedure thereon, and effective date requirements of the Administrative Procedure Act is impracticable and contrary to the public interest.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Executive Order 10173, as amended by Executive Order 10277, § 125.37 (a) is amended by changing the effective date from "January 1, 1952" to "April 1, 1952" so that it will read as follows:

§ 125.37 *Requirements for credentials; towing vessels or barges engaged in trade on the Great Lakes or the western rivers.* (a) On and after April 1, 1952, all persons desiring access to towing vessels or barges engaged in trade on the Great Lakes or the western rivers by reason of employment as masters or members of the crews of such vessels shall be required to be in possession of one of the identification credentials listed in § 125.11, and the master, operator, or owners of such vessels shall deny access to such vessels to any such persons who are not in possession of one of such identification credentials.

(40 Stat. 220, as amended; 50 U. S. C. 191. E. O. 10173, Oct. 18, 1950, 15 F. R. 7005; 3 CFR, 1950 Supp., E. O. 10277, Aug. 1, 1951, 16 F. R. 7537)

Dated: December 29, 1951.

[SEAL] A. C. RICHMOND,
Rear Admiral, U. S. Coast Guard, Acting Commandant.

[F. R. Doc. 52-58; Filed, Jan. 3, 1952; 8:49 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR Part 927]

[Docket No. AO-71-A-21]

HANDLING OF MILK IN NEW YORK METROPOLITAN MILK MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE AGREEMENT AND TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held at the Commodore Hotel, in New York City on January 18, 1952 beginning at 10:00 a. m., e.s.t., and at the Onondaga County War Memorial Auditorium (Assembly Room) in Syracuse, New York on January 21, 1952, beginning at 10:00 a.m., e. s. t., for the purpose of receiving evidence with respect to (1) the proposed amendments hereinafter set forth, or appropriate modifications thereof, to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the New York metropolitan milk marketing area, and (2) any other proposal to amend those provisions of such marketing agreement and order under which the minimum price for Class I-A milk of 3.5 percent butterfat in the 201-210 mile zone is established. These proposed amendments have not received the approval of the Secretary of Agriculture.

Following are proposed amendments listed for hearing:

1. Proposed by producer organizations:[1] Amend the provisions of the order under which the Class I-A price is computed by:

(a) Increasing the base price of $5.66, as set forth in § 927.40 (a) (2), by an amount between 24 and 44 cents; and

(b) Changing the table of seasonal adjustment factors, as set forth in § 927.40 (a) (11), so as to provide less seasonal variation in the Class I-A price.

2. Proposed by the Production and Marketing Administration: Amend those provisions of the order (§§ 927.40 (a) (1) and 927.46 (a) (1)) which provide for announcement and conversion to a 1948 base (for use in the Class I-A price formula) of the monthly wholesale price index for all commodities as reported by the Bureau of Labor Statistics, United States Department of Labor, by changing such provisions so as to provide for the announcement and proper conversion to a 1948 base of a revised wholesale commodity price index in which the period 1947-49, (rather than the year 1926 as at present) is used as a base.

3. Proposed by the Production and Marketing Administration: Amend § 927.45 to provide for use under the order of an index (as is now provided with respect to a price or prices) determined by the Secretary to be equivalent to or comparable with the index specified in the order in the event that such specified index is not reported or published.

Copies of this notice of hearing, the said order, as amended, and the said tentative marketing agreement may be procured from the Market Administrator, 205 East 42d Street, New York 17, New York, or from the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C. or may be there inspected.

Dated December 28, 1951, at Washington, D. C.

[SEAL] ROY W. LENNARTSON, *Assistant Administrator.*

[F. R. Doc. 52-53; Filed, Jan. 3, 1952; 8:48 a. m.]

[1] Dairymen's League Cooperative Association, Inc., Eastern Milk Producers Cooperative Association, Inc., Metropolitan Cooperative Milk Producers Bargaining Agency, Inc., Mutual Cooperative of Independent Producers, Inc., Tri-State Milk Producers Cooperative, Inc.

NOTICES

DEPARTMENT OF THE TREASURY

Bureau of Customs

[426.843]

RING WATCHCASES

TARIFF CLASSIFICATION

DECEMBER 29, 1951.

In the FEDERAL REGISTER of October 26, 1951 (16 F. R. 10907), notice was given of prospective classification of ring watchcases as articles designed to be worn on the person. The Bureau, by letter to the collector of customs, Tampa, Florida, dated December 29, 1951, ruled that ring watchcases made in such a way that the ring and the receptacle for the watch movement never have separate identities and are not physically separable are classifiable as articles designed to be worn on the person under paragraph 1527 (c), Tariff Act of 1930, and dutiable at the modified rate of 65 percent ad valorem if valued at not above $5 per dozen or at the modified rate of 35 percent if value above $5 per dozen, and not under paragraph 367 (f), as watchcases.

This ruling will be effective as to such or similar merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of publication of the abstract of this decision in a forthcoming issue of the weekly Treasury Decisions (19 CFR 16.10 (a)).

[SEAL] FRANK DOW, *Commissioner of Customs.*

[F. R. Doc. 52-62; Filed, Jan. 3, 1952; 8:50 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF OPENING OF LAND TO ENTRY UNDER THE SMALL TRACT ACT

DECEMBER 26, 1951.

1. Pursuant to the authority delegated to the Regional Administrator, Region VII, by the Director, Bureau of Land Management under section 2.21 of Order No. 427, approved by the Secretary of the Interior August 16, 1950 (15 F. R. 5641), the following described public lands, as well as other lands, in the Fairbanks, Alaska, Land District were classified by Alaska Small Tract Classification Order No. 39, dated April 16, 1951, as chiefly valuable for lease and sale as cabin sites under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U. S. C., sec. 682a), as amended, to become effective for filing under the act after due notice by publication:

SALCHA RIVER UNIT NO. 2

For lease and sale:

FAIRBANKS MERIDIAN

T. 5 S., R. 4 E.
Sec. 22: Lot 1, except that portion which if described in terms of a normal subdivision would be: E½SE¼NE¼NE¼, and SE¼NE¼ north of Salcha River.
Sec. 23: Lots 2, 3, and NW¼NW¼ except W½NW¼NW¼NW¼.

The lands described above comprise 17 tracts aggregating approximately 78.74 acres.

2. Located about 40 miles southeast of Fairbanks via the Richardson Highway, the lands embrace an area situated on the right limit of the Salcha River, approximately one half to one mile upstream from the highway bridge. Accessible only by foot trail or by boat from the bridge, the lands lie on a low, level meander spur which is characterized by sand and gravel bars along the river banks and wooded with a spruce-alder-willow association in the interior portion. Adequate water for domestic uses can be obtained from wells or from the river and sewage disposal may be made by the use of cesspools. No public facilities are obtainable in the area at the present time,

however some commercial services are provided by nearby Aurora Road house. The climate is of a subarctic continental type characterized by extremely cold winters and moderately warm summers. The average January temperature at Fairbanks is minus 11.2 degrees, and the average July temperature is 60.1 degrees.

3. Accordingly, under the authority delegated to me by section 2.21 of Order No. 1, Bureau of Land Management, Region VII, approved by the Acting Secretary of the Interior August 20, 1951 (16 F. R. 8625), notice is hereby given, that at 10:00 a. m. on January 15, 1952, the lands shall, subject to valid existing rights and the provisions of existing withdrawals become subject to application, location, petition, or selection as follows:

(a) *Ninety-one day period for preference right filings.* For a period of 91 days from 10:00 a. m. on January 15, 1952, to close of business on April 14, 1952, inclusive, to (1) application under the Small Tract Act of June 1, 1938, by qualified veterans of World War II, for whose service recognition is granted by the act of September 27, 1944, (58 Stat. 747, 43 U. S. C. secs. 279, 282) as amended, and by other qualified persons entitled to credit for service under the said act, subject to the requirements of applicable law, and (2) applications under any applicable public land laws, based on prior existing valid settlement and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Application by such veterans and by other persons entitled to credit for service shall be subject to claims of the classes described in subdivision (2).

(b) *Advance period for simultaneous preference right filings.* All applications by such veterans and persons claiming preference rights superior to those of such veterans filed on December 26, 1951, or thereafter, up to and including 10:00 a. m. on January 15, 1952, shall be treated as simultaneously filed.

(c) *Date for non-preference right filings authorized by the public land laws.* Commencing at 10:00 a. m. on April 15, 1952, any of the land remaining unappropriated shall become subject to application under the Small Tract Act by the public generally.

(d) *Advance period for simultaneous non-preference right filings.* Applications under the Small Tract Act by the general public filed on March 26, 1952, or thereafter, up to and including 10:00 a. m. on April 15, 1952, shall be treated as simultaneously filed.

4. A veteran shall accompany his application with a complete photostatic, or other copy (both sides) of his certificate of honorable discharge, or of an official document of his branch of service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claim. Persons asserting preference rights, through settlement or otherwise, and those having equitable claim, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

5. All applications referred to in paragraphs 3 and 4, which shall be filed in the Land Office at Fairbanks, Alaska, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations to the extent that such regulations are applicable. Applications under the Small Tract Act of June 1, 1938 shall be governed by the regulations contained in Part 257 of Title 43 of the Code of Federal Regulations.

6. Lessees under the Small Tract Act of June 1, 1938, will be required, within a reasonable time after execution of the lease, to construct upon the leased land, to the satisfaction of the appropriate officer of the Bureau of Land Management authorized to sign the lease, improvements which, in the circumstances, are presentable, substantial and appropriate for the use for which the lease is issued. Leases will be for a period of not more than three years, at an annual rental of $5.00, payable in advance for the entire lease period. Every lease will contain an option to purchase clause and every lessee may file an application to purchase at the sale price as provided in the lease.

7. All of the land will be leased in tracts varying in size from approximately 3.1 acres to approximately 6.6 acres, in accordance with the classification map on file in the Land Office, Fairbanks, Alaska. The tracts where possible are made to conform in description with the rectangular system of survey, in compact units.

8. All sewage disposal facilities will be located not less than 75 feet from the exterior boundaries of the tract described in the lease, *Provided, however,* That if said tract abuts upon any stream, lake or other body of fresh water, no sewage disposal facility shall be placed within 100 feet of any such water. If the tract described in the lease is located upon sloping lands, lessee should locate any well or sewage disposal facility according to the recommendations of the Alaska Territorial Department of Health.

9. The leases will be made subject to rights-of-way for road purposes and public utilities, of 33 feet in width, on each side of the tracts contiguous to the section and/or quarter section lines, or as shown on the classification maps on file in the Land Office, Fairbanks, Alaska. Such rights-of-way may be utilized by the Federal Government, or the State or Territory, county or municipality, or by any agency thereof. The rights-of-way may, in the discretion of the authorized officer of the Bureau of Land Management, be definitely located prior to the issuance of the patent. If not so located, they may be subject to location after patent is issued.

10. All inquiries relating to these lands shall be addressed to the Manager, Land Office, Fairbanks, Alaska.

HAROLD T. JORGENSON,
Chief, Division of Land Planning.

[F. R. Doc. 52-42; Filed, Jan. 3, 1952; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

1952 CROP OF HAWAIIAN SUGARCANE; FAIR AND REASONABLE PRICES AND REASONABLE WAGE RATES FOR PERSONS EMPLOYED IN PRODUCTION, CULTIVATION OR HARVESTING

NOTICE OF CHANGE OF PLACE OF HEARING

Pursuant to the authority contained in subsections (c) (1) and (c) (2) of section 301 of the Sugar Act of 1948 (61 Stat. 929; 7 U. S. C. Sup. 1131), notice is hereby given that a public hearing will be held at Hilo, on the Island of Hawaii, in the Community Playhouse at Lyman Field, on January 25, 1952, at 9:00 a. m. instead of at Hilo, on the Island of Hawaii, in the Circuit Court Room, on January 25, 1952, at 9:00 a. m., as announced in the notice of hearings and designation of presiding officers, published in the FEDERAL REGISTER of December 14, 1951 (16 F. R. 12622).

As stated in the notice heretofore published, the purpose of this hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1952, and fair and reasonable prices for the 1952 crop of Hawaiian sugarcane to be paid under either purchase or toll agreements by processors who as producers apply for payments under the said act.

Issued this 28th day of December 1951.

[SEAL] LAWRENCE MYERS,
Director, Sugar Branch.

[F. R. Doc. 52-52; Filed, Jan. 3, 1952; 8:47 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-585]

ALABAMA-TENNESSEE NATURAL GAS CO.

ORDER REJECTING PROPOSED FPC GAS TARIFF, EXTENDING EFFECTIVENESS OF INTERIM FPC GAS TARIFF AND FIXING DATE OF HEARING

DECEMBER 27, 1951.

On July 2, 1948, the Commission in the above-docketed proceedings issued an order, modifying the initial decision of the Presiding Examiner, issuing Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing, subject to the conditions set forth in said order, the construction and operation of certain natural-gas transmission facilities and the transportation and sale of natural gas in interstate commerce, all as therein more fully described. The condition contained in paragraph (B) of such order, reads as follows:

Alabama-Tennessee Natural Gas Company shall submit a tariff, including rates, charges, classifications, practices, services, rules, regulations and contracts for the transportation and sale of natural gas, satisfactory to the Commission at least six months prior to commencement of operations.

On December 16, 1949, Alabama-Tennessee filed its FPC Gas Tariff, Original Volume No. 1, to take effect on March 1, 1950, and to remain in effect on an interim basis until May 1, 1951.

On February 9, 1950, the Commission entered an order, later amended and supplemented by orders entered March 9 and 14, 1950, rejecting the proposed Tariff and reopening the record herein for the purpose of a public hearing "with respect to the matters involved in and necessary to the determination of a tariff satisfactory to the Commission." Pursuant thereto and after due notice, hearings were held commencing March 27 and concluding on April 13, 1950.

Subsequent to the hearings, the Commission, by order issued June 16, 1950, allowed the FPC Gas Tariff filed December 16, 1949, to take effect upon the following terms and conditions, among others:

(A) The FPC Gas Tariff, Original Volume No. 1, tendered by Alabama-Tennessee for filing on December 16, 1949, be and the same is hereby allowed to take effect on an interim basis for a period of fourteen (14) months, the said period to commence on the first calendar day of the month in which natural gas service is first rendered under the aforesaid interim tariff and shall extend to the first calendar day of the fifteenth month next following the said effective date.

(B) Thirty (30) days prior to the expiration date of the said fourteen-month period Alabama-Tennessee shall submit a tariff, including rates, charges, classifications, practices, services, rules, regulations and contracts for the transportation and sale of natural gas, satisfactory to the Commission, together with cost studies and other data in support thereof.

In connection therewith, the Commission stated in said order:

Our action herein will permit Alabama-Tennessee to go forward promptly with the completion of its project and commence natural gas service at an early date to all its customers, including communities and cities now without, but for a long time seeking, such service which we heretofore have found required by the public convenience and necessity. The experience of Alabama-Tennessee, revenue and cost-wise, during the forthcoming interim period that its interim Tariff is to be effective, will afford a basis for data for considering further what constitutes in this case a satisfactory tariff complying with the certificate rate condition and meeting the standards prescribed by the Natural Gas Act. This interim period should afford some testing of the conflicting estimates and data currently before us. This should be helpful to both the Commission and the Company when this tariff matter is to be considered later in accordance with our order.

On November 28, 1951, Alabama-Tennessee tendered for filing Second Revised Sheet No. 4 to its FPC Gas Tariff, to take effect on January 1, 1952, which proposes to continue in effect without change, the present interim rates and charges used by Alabama-Tennessee and which expire on December 31, 1951, by the terms and conditions of said order of June 16, 1950.

Alabama-Tennessee's present effective interim Tariff provides, among other things, for a rate for all natural gas sold for resale consisting of a monthly demand charge of $3.00 per Mcf of billing demand and a commodity charge of 16.5 cents per Mcf, as compared to a $2.70 demand and 12.3-cent commodity charge proposed by the company at the hearing on the application for a certificate as the rate which would be charged by it for sales for resale in interstate commerce.

In support of its filing of Second Revised Sheet No. 4 proposing to maintain the presently effective interim rates and charges without change, Alabama-Tennessee has submitted cost of service studies covering the twelve-month period of its operations ending October 31, 1951, including a rate of return of 6½ percent. These studies purport to show that Alabama-Tennessee's present interim rates and charges fail to produce a return of 6½ percent on business subject to the jurisdiction of the Commission by at least 1.6 cents per Mcf and, correspondingly, for the year 1952, by at least 4.0 cents per Mcf. On this basis, Alabama-Tennessee claims that the presently effective interim rate level should be maintained and continued.

The data submitted by Alabama-Tennessee in support of its proposed Second Revised Sheet No. 4 do not justify the proposed continuation of the interim rates presently in effect in that said rates and charges do not represent satisfactory compliance with the certificate rate condition and do not meet the standards of the Natural Gas Act.

Pursuant to § 154.16 of the Commission's regulations Under the Natural Gas Act, a copy of said Second Revised Sheet No. 4 has been sent to each customer affected thereby, and also to various State, county, and municipal authorities. Comments have been received from the cities of Corinth and Iuka, Mississippi and the cities of Decatur, Tuscumbia and Sheffield, Alabama.

The Commission finds:

(1) Alabama-Tennessee's FPC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 4, filed November 28, 1951 and proposed to be made effective as of January 1, 1952, does not constitute satisfactory compliance with the terms and conditions of paragraph (B) of the order issued July 2, 1948, and with the requirements of paragraph (B) of the order issued June 16, 1950, issued in these proceedings, and said Second Revised Sheet No. 4 should be rejected.

(2) It is necessary or appropriate in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing for the purpose of determining the just, reasonable, non-preferential and non-discriminatory rate, charge, classification, rule, regulation, service, practice or contract to be thereafter observed and in force by Alabama-Tennessee, and to fix the same by order.

(3) Pending hearing it is necessary or appropriate in the public interest that the period of effectiveness of Alabama-Tennessee's interim FPC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4, be extended for one month from December 31, 1951, and to and including January 31, 1952.

The Commission orders:

(A) Alabama-Tennessee Natural Gas Company's FPC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 4, submitted for filing on November 28, 1951, and proposed to become effective on January 1, 1952, be and the same is hereby rejected, and it shall have no force and effect as a schedule of rates and charges filed under the Natural Gas Act.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 5, 7 and 15 of the Natural Gas Act, and pursuant to the conditions of paragraph (B) of the Commission's order issued herein on July 2, 1948 and June 16, 1950, a public hearing be held, commencing on January 14, 1952, at 10:00 a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., to determine the just, reasonable, non-preferential or non-discriminatory rate, charge, classification, rule, regulation, service, practice, or contract to be thereafter observed and in force by Alabama-Tennessee for sales of natural gas for resale in interstate commerce and to fix the same by order.

(C) The period of effectiveness of Alabama-Tennessee Natural Gas Company's present effective FPC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4, which by the terms of the Commission's order of June 16, 1950, expires on December 31, 1951, be and the same is hereby extended for one month to and including January 31, 1952.

(D) Nothing herein shall be construed as limiting the right of the Commission with respect to the extension, cancellation, or other action concerning any tariff of Alabama-Tennessee Natural Gas Company now on file with the Commission on an interim basis, nor as limiting the right of the Commission to permit any new tariff to become effective on an interim basis.

(E) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the Commission's rules of practice and procedure.

Date of issuance: December 28, 1951.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 52-54; Filed, Jan. 8, 1952; 8:48 a. m.]

[Docket Nos. G-1384, G-1175]

ATLANTIC SEABOARD CORP. AND VIRGINIA GAS TRANSMISSION CORP.

ORDER GRANTING MOTION FOR ORAL ARGUMENT AND FIXING DATE THEREFOR

DECEMBER 27, 1951.

Atlantic Seaboard Corporation and Virginia Gas Transmission Corporation, respondents herein, on December 12, 1951, filed a motion for an opportunity to present oral argument with respect to exceptions to and appeals from the decision filed herein by the Presiding Examiner on November 7, 1951.

A similar motion was filed on December 17, 1951, by the Consolidated Gas, Electric Light and Power Company of Baltimore, an intervener herein.

The Commission finds: It is desirable and in the public interest that such motions be granted.

The Commission orders:

(A) Oral argument be had before the Commission on January 16, 1952, commencing at 10:00 o'clock a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., with respect to the exceptions to and the appeals from the decision of the Presiding Examiner filed herein on November 7, 1951.

(B) Those parties to these proceedings who desire to participate in the oral argument shall so notify the Secretary of the Commission on or before January 9, 1952, and at the time of giving such notice shall advise as to the time requested for presentation of their argument.

Date of issuance: December 28, 1951.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 52-55; Filed, Jan. 3, 1952; 8:48 a. m.]

[Docket No. G-1487]

CITY OF HASTINGS, NEBRASKA, AND KANSAS-NEBRASKA NATURAL GAS CO., INC.

ORDER FIXING DATE OF ORAL ARGUMENT

DECEMBER 27, 1951.

On September 20, 1950, the City of Hastings, Nebraska, (Hastings) filed with the Commission a complaint against Kansas-Nebraska Natural Gas Company, Inc., (Kansas-Nebraska) alleging, among other things, that a restriction contained in the applicability clause of respondent Kansas-Nebraska's Rate Schedule G-1 contained in its tariff on file with the Commission, is improper and unlawful in that such restriction provides that said rate schedule shall not apply to the volume of gas which may be used by the buyer in its electric generating stations.

On October 30, 1950, Kansas-Nebraska filed a motion to dismiss said complaint, alleging, among other things, that the Commission has no jurisdiction.

On November 10, 1950, Hastings filed an affidavit in opposition to Kansas-Nebraska's motion to dismiss the complaint.

Hastings requests oral argument on the matters raised in its complaint and Kansas-Nebraska requests oral argument on its motion to dismiss the complaint.

The Commission finds: It is reasonable and in the public interest that oral argument should be had before the Commission concerning the matters involved and the issues presented by the aforesaid motion to dismiss the complaint and the aforesaid affidavit in opposition to the motion to dismiss the complaint.

The Commission orders:

(A) Oral argument be had before the Commission on February 28, 1952, at 10:00 a. m., e. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by the aforesaid motion to dismiss the complaint of the City of Hastings, Nebraska, and the aforesaid affidavit in opposition to the motion to dismiss the complaint.

(B) Each party to this proceeding shall notify the Secretary of the Commission on or before February 11, 1952, with respect to the time it deems necessary for argument.

Date of issuance: December 28, 1951.

By the Commission.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 52-56; Filed, Jan. 3, 1952; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 54-161, 59-20, 59-8, 54-75]

COMMONWEALTH AND SOUTHERN CORP. (DELAWARE) ET AL.

ORDER RELEASING JURISDICTION OVER CERTAIN FEES AND EXPENSES

DECEMBER 28, 1951.

In the matter of The Commonwealth & Southern Corporation (Delaware), File No. 54-161; The Commonwealth & Southern Corporation (Delaware), respondent, File No. 59-20; The Commonwealth & Southern Corporation (Delaware), and its subsidiary companies, respondents, File No. 59-8; The Commonwealth & Southern Corporation (Delaware), File No. 54-75.

The Commission by its order dated November 22, 1948, having approved a plan filed under section 11 (e) of the Public Utility Holding Company Act of 1935 ("the act") by The Commonwealth & Southern Corporation ("Commonwealth"), a registered holding company, for its liquidation and dissolution; and

Said order of November 22, 1948 having reserved jurisdiction over the determination of the reasonableness and appropriate allocation of all fees and expenses and other remuneration incurred in connection with said plan and the transactions incident thereto; and

Applications for allowances for fees and reimbursement of expenses having been filed herein, as set forth in the Commission's notice of hearing thereon (Holding Company Act Release No. 9853), a public hearing with respect to such applications having been held, and the staff of the Division of Public Utilities having issued a recommended findings and opinion thereon; and

Following the issuance of such recommended findings and opinion, certain of the participants to whom the staff had recommended the payment of an allowance in an amount less than originally requested having filed amended applications reducing their claims, and Commonwealth having stated it is willing to pay to the below-named applicants the amounts recommended in such recommended findings and opinion; and

The Commission having considered the applications, the amended applications, the staff's recommended findings and opinion and the record in these proceedings:

It is hereby ordered, That Commonwealth is authorized and directed to pay fees and expenses as set forth below, subject to deductions for amounts previously paid on account:

Recipient or applicant	Fees	Expenses
Winthrop, Stimson, Putnam & Roberts	$220,000.00	$2,379.24
Jay Samuel Hartt	44,147.13	11,780.49
Lionel D. Edie & Co	2,050.00	----------
Roswell Magill	1,000.00	----------
Bankers Trust Co.:		
For services re File No. 54-161	3,500.35	----------
For services re File No. 54-161	133,332.70	4,247.87
For services re sale of unclaimed stock in 1951	1,000.00	----------
The First National Bank of the City of New York	37,033.20	3,602.01
General expenses of Commonwealth	----------	153,036.54
George Roesler	40,000.00	2,155.03
Hays, St. John, Abramson & Schulman	20,000.00	777.43
Townsend, Elliott & Munson	100,000.00	4,220.25
Reis & Chandler, Inc	18,000.00	601.15
Clarence A. Warden	5,000.00	----------
James E. Gowen	2,000.00	----------
Marshall S. Morgan	2,000.00	----------
Archibald B. Johnson	1,416.95	----------

It is further ordered, That the reservation of jurisdiction in this matter with respect to the foregoing fees and expenses be, and the same hereby is, released, on condition that payment of such fees and expenses, not heretofore paid, be made on or before December 31, 1951.

It is further ordered, That the reservation of jurisdiction over fees and expenses contained in our said order of November 22, 1948, hereby is expressly continued except as specifically released herein.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 52-50; Filed, Jan. 3, 1952; 8:47 a. m.]

[File No. 70-2676]

WEST PENN RAILWAYS CO.

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE REGARDING PAYMENT BY SUBSIDIARY TO PARENT HOLDING COMPANY OF PARTIAL LIQUIDATING DIVIDEND

DECEMBER 28, 1951.

West Penn Railways ("Railways"), a registered holding company and a direct and wholly owned subsidiary of The West Penn Electric Company ("West Penn Electric"), also a registered holding company, having filed a declaration with two amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("act") and certain rules and regulations promulgated thereunder with respect to the following transaction:

Railways, whose capitalization consists solely of common stock, proposes to make a cash distribution of $250,000 to West Penn Electric as the owner of all the outstanding common stock of Railways. The proposed distribution will amount to $250 a share on the outstanding 1,000 shares of common stock of Railways. The proposed distribution is in partial liquidation of Railways, certain steps having heretofore been taken by the company looking towards its eventual liquidation.

It is stated that the proposed cash distribution will be charged against capital surplus of Railways and that thereafter Railways will have sufficient capital and capital surplus to satisfy the operational requirements of Railways and to satisfy the laws of the State of Pennsylvania, the state in which Railways is organized and conducts its business.

Notice of the filing of this declaration having been duly given in the form and manner prescribed by Rule U-23, promulgated pursuant to the act, and the Commission not having received a request for a hearing, and not having ordered a hearing thereon; and

The Commission finding with respect to this declaration, as amended, that there is no basis for any adverse findings and deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective forthwith:

It is ordered, Pursuant to said Rule U-23 and the applicable provisions of the act, that the declaration, as amended, be, and the same hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary*.

[F. R. Doc. 52-47; Filed, Jan. 3, 1952; 8:46 a. m.]

[File No. 70-2736]

COLUMBIA GAS SYSTEM, INC.

ORDER RELEASING JURISDICTION OVER FEES AND EXPENSES

DECEMBER 28, 1951.

The Commission having, by order dated November 20, 1951, permitted to become effective the declaration of The Columbia Gas System, Inc. ("Columbia"), a registered holding company, regarding the issuance and sale by Columbia to its stockholders, pursuant to a rights offering of 1,501,826 shares of additional common stock, with a provision to offer any unsubscribed shares to underwriters; and

Said order of November 20, 1951, having contained a reservation of jurisdiction with respect to the payment of all fees and expenses to be incurred in connection with the proposed transaction; and

Statements with respect to the estimated fees and expenses having been filed, such statements setting forth the said fees and expenses incurred by Columbia, as follows:

Filing fee—Securities and Exchange Commission	$2,642.92
Printing of registration statement, prospectus and other documents and papers	36,800.00
Engineers' and accountants' fees	17,500.00
Charges of Columbia Gas System Service Corp. (a subsidiary service company) for cost of services rendered in connection with the preparation of the registration statement, the declaration to the Commission on Form U-1, and other documents and papers	3,000.00
Original issue tax	27,500.00
Printing of common stock certificates and warrants	8,950.00
Listing common stock on New York and Pittsburgh Stock Exchanges	8,625.00
Fees of subscription agent	100,000.00
Fees of transfer agent and registrar in connection with issuance of common stock certificates	27,500.00
Miscellaneous expenses	4,700.00
Legal services:	
Cravath, Swaine & Moore (Counsel for Columbia)	12,500.00
Local counsel	1,000.00
Total—Columbia	250,717.92
Shearman & Sterling & Wright (counsel for bidders)	10,000.00

The Commission, on the basis of its examination of the record, finding that such fees and expenses are not unreasonable, if they do not exceed the estimated amounts, as set forth above, and finding it appropriate to release jurisdiction over the payment of such fees and expenses:

It is ordered, That jurisdiction heretofore reserved over the fees and expenses incurred in connection with the issuance and sale of the additional shares of common stock be, and the same hereby is, released.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary*.

[F. R. Doc. 52-48; Filed, Jan. 3, 1952; 8:46 a. m.]

[File No. 70-2752]

MILWAUKEE ELECTRIC RAILWAY & TRANSPORT CO. AND WISCONSIN ELECTRIC POWER CO.

ORDER PERMITTING NON-UTILITY SUBSIDIARY TO REDEEM BONDS, ALL HELD BY PARENT HOLDING COMPANY

DECEMBER 27, 1951.

The Milwaukee Electric Railway & Transport Company ("Milwaukee"), a non-utility company, and its parent company, Wisconsin Electric Power Company ("Wisconsin"), a registered holding company, having filed a joint declaration pursuant to the Public Utility Holding Company Act of 1935 ("act"), particularly section 12 thereof and Rule U-42 of the rules and regulations promulgated thereunder, with respect to the following transaction:

Milwaukee proposes to redeem on or about December 31, 1951, at the principal amount thereof plus accrued interest, $1,000,000 principal amount of its First Mortgage 4 Percent Bonds. A total of $4,000,000 principal amount of such bonds are presently outstanding, all of which are owned by Wisconsin. Wisconsin seeks authorization to surrender said bonds on the basis described.

Said joint declaration having been filed on November 26, 1951, and notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to the act, and the Commission not having received a request for a hearing with respect to said joint declaration within the period specified in said notice or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to the joint declaration that the applicable provisions of the act and the rules promulgated thereunder are satisfied and that no adverse findings are necessary, and deeming it appropriate in the public interest and in the interest of investors and consumers that said joint declaration be permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said joint declaration be, and the same hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary*.

[F. R. Doc. 52-43; Filed, Jan. 3, 1952; 8:45 a. m.]

[File No. 70-2756]

MONTAUP ELECTRIC CO.

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

DECEMBER 27, 1951.

Montaup Electric Company ("Montaup"), an indirect public-utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, has filed a declaration with this Commission, pursuant to section 7 of the Public Utility Holding Company Act of 1935 ("the act") with respect to the following transactions:

Montaup expects to have outstanding on December 31, 1951, $12,000,000 face amount of unsecured short-term notes maturing on said date and evidencing borrowings from The First National Bank of Boston ("First National"). Montaup proposes to issue to said bank under a new loan agreement unsecured promissory notes in the aggregate amount of $12,000,000. Each note will bear interest at the prime interest rate existing at its date of issuance and will mature not later than one year less one day after the date of issue of the first of said notes and in no event later than December 30, 1952. The declaration states that the prime interest rate at the time of the filing thereof was 2¾ percent.

The declaration further states that Montaup will not issue any of the proposed notes at an interest rate in excess of 3 percent except after the filing of an amendment which, unless the Commission gives notice to the contrary, shall become effective five days after the filing thereof. The declaration further states that First National is not obligated to lend in excess of $4,000,000 and that First National has received firm commitments from other named banks to participate to the extent of $8,000,000.

The declaration indicates that the proceeds of the proposed notes will be used to repay Montaup's outstanding unsecured promissory notes as at December 31, 1951. The declaration further indicates that the proposed notes will be retired by the financing proposed in the presently pending Amended Plan of Reorganization No. 2 of EUA and its subsidiary companies (File No. 54-188).

The declaration further indicates that, with respect to the proposed transactions, it is not necessary to secure the approval of any State commission or Federal commission, other than this Commission. The expenses in connection with the proposed transactions are estimated in the declaration at $1,500 of which $1,400 represents estimated fees and expenses for legal services. Montaup requests that the Commission's order herein become effective forthwith upon issuance.

Due notice having been given of the filing of the declaration, and a hearing not having been requested nor ordered by the Commission; and the Commission finding that the applicable provisions of the act and the rules promulgated thereunder are satisfied, and deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective, forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act that said declaration be, and hereby is, permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-44; Filed, Jan. 3, 1952; 8:45 a. m.]

[File No. 70-2759]

NEW ENGLAND POWER CO.

ORDER AUTHORIZING ISSUANCE AND SALE OF PROMISSORY NOTES TO BANK

DECEMBER 27, 1951.

New England Power Company ("NEPCO"), a subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a declaration with this Commission, pursuant to sections 6 (a) and 7 of the Public Utility Holding Company Act of 1935 ("the act") and Rule U-23 thereunder, with respect to the following transactions:

Pursuant to a bank loan agreement with five banks, NEPCO has outstanding $9,900,000 of unsecured promissory notes, due April 1, 1952, of which $7,400,000 bear interest at the rate of 2½ percent per annum and the balance, $2,500,000, bear interest at the rate of 2¾ percent per annum, it being stated that such interest rates are the prime rate generally charged by banks on the date of issue. NEPCO proposes to issue to the same banks additional unsecured promissory notes under an amendment to its bank loan agreement which amendment provides (1) for the increase in the borrowing limits from an aggregate of $12,000,000 to $16,000,000, (2) for a change in the expiration of the borrowing period from December 31, 1951, to March 31, 1952, (3) for a change in the maturity date for all notes representing borrowings under the agreement from April 1, 1952, to June 1, 1952, and (4) that interest rates shall be as follows: on the $7,400,000 borrowed prior to October 1, 1951, 2½ percent to April 1, 1952, and from then to maturity at the prime rate at April 1, 1952, but not less than 2¾ percent or more than 3 percent; on borrowings made subsequent to October 1, 1951, and prior to the effectiveness of the amendment of the original agreement, 2¾ percent to April 1, 1952, and from then to maturity at the prime rate at April 1, 1952, but not less than 2¾ percent or more than 3 percent; and on borrowings subsequent to the effectiveness of the amendment, at the prime rate on the fifth business day prior to each borrowing but not less than 2¾ percent or more than 3 percent. The declaration states that the prime interest rate at the time of the filing thereof was 2¾ percent. The amendment will also provide for the issuance of new notes on the effective date to replace the notes then outstanding, and that commitment commissions at the rate of ¼ of 1 percent per annum will be payable to March 31, 1952, on the average daily unborrowed amounts.

The declaration further states that NEPCO expects that the major portion of its note indebtedness will be financed permanently through the issuance of common stock and first mortgage bonds in the early part of 1952 and further states that NEPCO has been advised by NEES that the parent company expects to have the necessary funds to invest in such common stock from the proceeds of the sale of its Massachusetts gas properties.

The declaration further states that the expenses in connection with the proposed transactions are estimated by NEPCO not to exceed $1,100. In addition, NEPCO will reimburse The First National Bank of Boston, as agent for the five lending banks, for out-of-pocket expenses, including counsel fees incurred in connection with the amendment of the loan agreement. The declaration further states that no State commission other than the Public Utilities Commission of New Hampshire and no Federal Commission, other than this Commission, has jurisdiction over the proposed issuance of notes. The Public Utilities Commission of New Hampshire has issued an order (No. 6023, December 4, 1951) granting NEPCO an exemption with respect to the issuance of said $16,000,000 aggregate amount of promissory notes. NEPCO requests that the Commission's order herein become effective forthwith upon issuance.

Due notice having been given of the filing of the declaration, and a hearing not having been requested nor ordered by the Commission; and the Commission finding that the applicable provisions of the act and the rules promulgated thereunder are satisfied, and deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective, forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act that said declaration be, and hereby is, permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-45; Filed, Jan. 3, 1952; 8:46 a. m.]

[File No. 70-2760]

ARLINGTON GAS LIGHT CO. ET AL.

ORDER AUTHORIZING AN INCREASE IN BANK BORROWINGS

DECEMBER 27, 1951.

In the matter of Arlington Gas Light Company, Central Massachusetts Gas Company, Gloucester Gas Light Company, Malden and Melrose Gas Light Company, Northampton Gas Light Company, Salem Gas Light Company, Wachusett Gas Company; File No. 70-2760.

The above named companies (hereinafter individually referred to as "Arlington," "Central Mass.," "Gloucester," "Malden and Melrose," "Northampton," "Salem," and "Wachusett" and collectively referred to as "the borrowing companies"), all subsidiary companies of New England Electric System ("NEES"), a registered holding company, have filed declarations, pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rules U-42 (b) (2) and U-50 (a) (2) promulgated thereunder, with respect to the following transactions:

Under separate bank loan agreements with The National City Bank of New York, dated May 8, 1951, the borrowing companies were authorized by this Commission to borrow, from time to time but not later than December 31, 1951, an aggregate amount of $7,150,000, such borrowings to be evidenced by promissory notes maturing May 1, 1952 (Holding Company Act Release No. 10575). Under proposed amendments to said bank loan agreements the borrowing limits of the borrowing companies are increased to an aggregate amount of $8,250,000 and the interest rates on borrowings in excess of the limits specified in the original agreements are increased by ¼ of 1 percent per annum. In addition, the date for the making of borrowings is extended to March 31, 1952 and the commitment fee of ½ of 1 percent per annum on the average daily difference between the bank's commitment and the amount borrowed is extended to March 31, 1952.

The following table shows the aggregate borrowing limits of each of the borrowing companies under the original agreement, the aggregate borrowing limits of said companies under the proposed amended agreements and the proposed rates of interest, per annum, of said notes:

TABLE

	Borrowing limits under original agreements	Borrowing limits under amended agreements	Interest rate per annum (percent)
Arlington	$1,200,000	$1,800,000	[1]2¾
Central Massachusetts	400,000	550,000	[1]3
Gloucester	500,000	500,000	3
Malden and Melrose	3,000,000	3,000,000	2¾
Northampton	400,000	500,000	[1]3
Salem	1,400,000	1,650,000	[1]2¾
Wachusett	250,000	250,000	3
	7,150,000	8,250,000	

[1] The notes representing aggregate borrowings in excess of the limits under the original agreements will bear interest at ¼ of 1 percent higher than the indicated rate.

The declaration states that incidental services in connection with the proposed transactions will be performed at cost by New England Power Service Company, an affiliated service company, such cost being estimated not to exceed $400 for each of the borrowing companies, or an aggregate sum of $2,800. The declaration further states that each of the borrowing companies will reimburse the lending bank for out-of-pocket expenses, including counsel fees, incurred in connection with the loan agreements and it is understood by the borrowing companies that such expenses, if any, will be nominal.

The declaration further states that no State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The borrowing companies request that the Commission's order herein become effective forthwith upon issuance.

Due notice having been given of the filing of the declaration, and a hearing not having been requested nor ordered by the Commission; and the Commission finding that the applicable provisions of the act and the rules promulgated thereunder are satisfied, and deeming it appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act that said declaration be, and hereby is, permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 52-46; Filed, Jan. 3, 1952; 8:46 a. m.]

[File No. 70-2761]

GENERAL PUBLIC UTILITIES CORP. AND DOVER CASUALTY INSURANCE CO.

ORDER AUTHORIZING DISSOLUTION OF SUBSIDIARY INSURANCE COMPANY, WITH RECITALS PURSUANT TO SUPPLEMENT R OF INTERNAL REVENUE CODE

DECEMBER 28, 1951.

General Public Utilities Corporation ("GPU"), a registered holding company, and Dover Casualty Insurance Co. ("Dover"), its wholly-owned subsidiary, having filed a joint application-declaration and amendments thereto pursuant, inter alia, to sections 11 (b) (1), 12 (c), and 12 (f) of the Public Utility Holding Company Act of 1935 ("the act") and Rules U-23, U-42, and U-43 thereunder, with respect to the following proposed transactions:

It is proposed that Dover, a Delaware corporation, be dissolved pursuant to the provisions of Delaware law, and that all its assets, subject to its liabilities, be transferred to GPU in consideration of the surrender and cancellation of all Dover's outstanding capital stock, consisting of 900 shares of common stock without par value, carried on GPU's books at $532,000 less a reserve of $104,400 (or $427,600 net). Dover has no other securities outstanding.

As of October 31, 1951 Dover's balance sheet showed assets of $438,347, consisting of United States Treasury Bonds, 2½ percent, carried at their principal amount of $150,000; Elmira Water, Light and Railroad Company ("Elmira") 5 percent first mortgage bonds due 1956 ($72,000 principal amount), carried at $66,360; cash and interest receivable, $221,987. As of the same date Dover's liabilities and other credits were: current and accrued liabilities, $1,554; reserve for tax contingencies, $18,735; capital stock and surplus, $418,058. As an incident to carrying out the program of dissolution, Dover proposes to sell for cash its holdings of Elmira bonds, turning over to GPU only cash and government bonds.

Applicants-declarants state that prior to October 1, 1950, Dover was engaged in re-insuring casualty and fire losses applicable to present and former subsidiaries or affiliates of GPU; that, being advised that such business with former subsidiaries or affiliates was not reasonably incidental or economically necessary or appropriate to the operation of GPU's integrated electric utility system, and concluding that such business would be uneconomic if restricted solely to companies in the integrated system, Dover on October 1, 1950, ceased to do business; that Dover has now liquidated all liabilities with respect to its insurance business and is in a position to be dissolved.

Applicants-declarants further state that the disposition by Dover of the Elmira bonds is in compliance with the Commission's order entered on March 11, 1949 pursuant to section 11 (b) (1) of the act in the matter of New York State Electric & Gas Corporation (New York State) et al., File Nos. 70-2029 and 59-32, wherein GPU was ordered to sever its relationship with New York State by disposing or causing the disposition of its direct and indirect ownership of securities of said company, said Elmira bonds being securities of New York State by its acquisition of the physical properties and assumption of the liabilities of Elmira. It is therefore requested that the Commission enter an order that the proposed transfer, sale and delivery of the Elmira bonds are necessary or appropriate to effectuate the provisions of section 11 (b) of the act within the meaning of sections 371 to 373, inclusive, and 1808 (f) of the Internal Revenue Code, as amended.

The application-declaration states that no other regulatory agency has jurisdiction over the proposed transactions, that no underwriting fees or commissions will be paid, and that the expenses will not be significant.

It is requested that the Commission's order be made effective forthwith upon issuance.

Due notice having been given of the filing of the application-declaration, and a hearing not having been requested of or ordered by the Commission; and the Commission finding that the applicable provisions of the Act are satisfied and that no adverse findings are necessary, and deeming it appropriate in the public interest and in the interest of investors and consumers that said application-declaration as amended be granted and permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application-declaration as amended be, and the same hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule U-24; and

It is further ordered and recited, That the sale, transfer and delivery by Dover for cash of $72,000 principal amount of 5 percent First Mortgage Bonds due 1956 of Elmira are necessary or appropriate to the integration or simplification of the GPU system, of which GPU and Dover are a part, and are necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 52-49; Filed, Jan. 3, 1952; 8:46 a. m.]

[File No. 70-2767]

UNITED GAS CORP. AND UNITED GAS PIPE LINE CO.

NOTICE OF FILING REGARDING ISSUANCE AND SALE OF BONDS AND RELATED TRANSACTIONS

DECEMBER 28, 1951.

Notice is hereby given that United Gas Corporation ("United"), a gas utility subsidiary of Electric Bond and Share Company, a registered holding company, and United's wholly owned subsidiary, United Gas Pipe Line Company ("Pipe Line"), have filed an application-declaration pursuant to the Public Utility Holding Company Act of 1935, and have designated sections 6 (a), 7, 9 (a) (1), 10, and 12 thereof, and Rule U-50 of the rules and regulations promulgated thereunder as applicable to the proposed transactions which are summarized as follows:

On June 21, 1951, the Commission issued its findings and opinion and order concerning the over-all financing program of United and Pipe Line to meet their construction program (Holding Company Act Release No. 10636). Pursuant to the authorization there granted, United issued and sold 1,065,330 shares of common stock pursuant to a rights offering, and $50,000,000 principal amount of First Mortgage and Collateral Trust Bonds, 3⅝ Percent Series, due 1971, pursuant to the competitive bidding requirements of Rule U-50. Proceeds from the sales of these securities, together with treasury cash were used by United to acquire from Pipe Line, for cash at par, $25,000,000 principal amount of Pipe Line's 4 Percent First Mortgage Bonds, due June, 1971, and $45,000,000 principal amount of Pipe Line's 4½ Percent Sinking Fund Debentures, due 1971.

As the second step in its over-all program, United proposes to issue and sell pursuant to the competitive bidding requirements of Rule U-50, $50,000,000 principal amount of its First Mortgage and Collateral Trust Bonds -- Percent Series, due 1972. Such bonds will be issued under and secured by United's Mortgage and Deed of Trust, dated as of October 1, 1944, as supplemented by the First, Second, Third and Fourth Supplemental Indentures, and to be supplemented by a Fifth Supplemental Indenture.

Proceeds from the sale of the bonds, together with treasury cash, will be used by United to purchase from Pipe Line for cash, at par, plus accrued interest $45,000,000 principal amount of Pipe Line's First Mortgage Bonds, 4 percent Series, due 1971, and $10,000,000 principal amount of Pipe Line's 4½ Percent Sinking Fund Debentures, due 1971. The bonds proposed to be issued and sold to United by Pipe Line will be issued under Pipe Line's Mortgage and Deed of Trust dated as of September 25, 1944, as supplemented and to be supplemented by the First, Second, Third, Fourth, Fifth, and Sixth Supplemental Indentures, and will be pledged under United's Mortgage and Deed of Trust. The debentures proposed to be issued and sold by Pipe Line will be issued under its Debenture Agreement dated as of June 25, 1951.

Proceeds from the sale of securities by Pipe Line to United will be used in connection with Pipe Line's construction program and for other general corporate purposes. The application-declaration states that United and Pipe Line will have expended $91,000,000 towards their over-all construction program by December 31, 1951, and that it is contemplated that the remaining $82,500,000 will be expended during the year 1952.

Notice is further given that any interested person may, not later than January 15, 1952, at 5:30 p. m., e. s. t., request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of fact or law, if any, raised by said application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after January 15, 1952, at 5:30 p. m., e. s. t., said application-declaration, as filed or as amended, may be granted as provided in Rules U-20 (a) and U-100 thereof.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 52-51; Filed, Jan. 3, 1952; 8:47 a. m.]